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**SEIZURE BY THE JAPANESE**

**OF**

**M R. M O S S,**

**AND**

**HIS TREATMENT BY THE CONSUL-GENERAL.**





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SEIZURE BY THE JAPANESE

OF

MR. MOSS,

AND HIS

TREATMENT BY THE CONSUL-GENERAL.

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LONDON :

○ WILLIAM RIDGWAY, 169, PICCADILLY, W.

A. H. BAILY & Co. CORNHILL.

1863.

Page

44. Preparations ordered for my deportation before my trial or any examination.
46. The Consular Officials & Community in the habit of shooting. The Sect. of Legation leaves Yedo for shooting excursion on the day of my arrest. -
48. No prohibition against shooting existed.
49. Persons shooting reported to the Consul no word of warning or disapproval called forth. -
51. In spite of my protest I am deported in a ship infected with small pox though others were available. -
64. 196. The gun in the hands of a Japanese officer when fired. This fact acknowledged by the Foreign Office. -
65. 69. Reversal of the Consul General's Verdict by the Home Government. -
79. 82. Ruined and penniless I am unable to proceed any further at Yedo.
83. The Govt. would defend the Consul General were I able to commence a fresh suit. -

Handwritten signature

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## INTRODUCTION.

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BUT few introductory words are necessary as a preface to the narrative contained in the following pages.

A little more than two years ago I was a merchant in Japan, on the high road to fortune. I am now a ruined man, forced to begin life again under a bitter sense of injustice and a load of debt. This change has been brought about by an illegal sentence passed on me by the Consul-General at Japan—a sentence, the illegality of which has been since acknowledged by the Home Government, by whom it has been cancelled. Though the sentence has been cancelled, the ruin remains.

After long and weary negotiations the Government have declined to compensate me in any way for the loss of all I possessed. I am told that I may proceed at law against the Consul-General, but at the same time I am informed that the public purse will be employed to defend him. As my own is now empty, this alternative is of course a mockery.

If these are the circumstances of my case, I think no one will deny its extreme hardship. I challenge those who oppose my claim to show that in stating my case thus, I have departed one iota from

the truth. In the following pages I do more than this—I prove by official documents that the facts bear out this statement.

In addition to pecuniary loss I have gone through unmerited bodily suffering at the hands of the Japanese, which I should once have thought would have earned for me the cordial sympathy of the English Government. Melancholy experience has shown me that if I had thought thus, I should have been mistaken. I will, however, without more words, proceed with my narrative; convinced that a statement of facts will do me more service with my readers than eloquence, even if I had any at my command.

MICHAEL MOSS.

LANGBOURN CHAMBERS, FENCHURCH STREET,  
*London, February, 1863.*

## NARRATIVE.

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AVAILING myself of the advantages offered by the Treaty entered into with the Tycoon of Japan, I left England in the spring of 1859 by Overland Mail, for Shanghai, thence to find my way to Kanagawa, Japan. Of the three ports, then about to be opened to foreign trade, Kanagawa appeared to me to be the one, which would quickly grow to the highest commercial importance ;—it being placed on the richest and largest island of the empire,—situated in a noble bay, and distant only sixteen or seventeen miles from Yedo, the metropolis and capital of the kingdom.

From Shanghai, I sailed for this port, calling on the voyage at Nagasaki, another port of Japan, situated on the southern island of Kieusieu, and long known to the western world through the Dutch factory of Decima, a small isolated settlement there. At the end of August I arrived at Kanagawa, having experienced, on the voyage from Nagasaki, the dangers of a typhoon and the sudden gales, so frequent off the Japanese coast. My first business was to procure a house, or a habitation of some kind, or ground on which to build one, as well as a warehouse to provide for the accommodation of

goods, with which I had partly freighted a ship from London, and whose arrival I had hastened there to anticipate. After nearly two months' work, I succeeded in having built for me, a dwelling house, warehouse, and other offices, on a plot of land, which had been granted me by the Japanese authorities, and on which I commenced to establish my future business.

During the autumn and winter of 1859-60, communication with China, and through China with the more civilized world, was irregular and uncertain:—the only means being the few merchant vessels which then carried our trade and occasional ships of war calling at our port. On my arrival I found there were only two English merchants residing there, and the whole foreign community, with myself and three other fellow passengers, did not I believe number more than twelve.

The irregular intervals between communication with China, left us much time upon our hands; for though the trade was exceedingly rich, and profitable to a rare degree, it was but in its birth. Plans for enlarging the commercial advantages before us, for our firmer and better establishment, or for improving our buildings and dwellings, necessarily occupied a large portion of time, yet, as may be supposed, still gave us ample leisure, and cast us for amusement and recreation, requisite even in Japan, on our own resources. The country, rich in natural beauties of the highest and most delightful order,

tempted us to explore it. As ponies and horses were easily obtained, we did so frequently. During our rides, game was constantly startled, rising at the very feet of our horses ; little surprise will therefore be felt, if shooting was at once eagerly commenced, and the country being well stocked with game, undisturbed and uncared for by the Japanese, it became the principal amusement.

During the first month or two no objection was raised by the native authorities ; on the contrary every information was given, and during our excursions every assistance rendered, both by the Japanese officials and people. After a time, however, it seemed to be jealously regarded, and the Japanese authorities represented to the English Consul (Capt. F. Howard Vyse), their dislike and objections to the foreigners going out shooting. On their persisting in their objection, the Consul issued a notification, requesting the community to desist for a time, as the question was in abeyance. The Treaty had given foreigners the right of free movement ten ri (ri = 4275 yds.) around the open ports, with the exception of that side of Kanagawa, nearest to Yedo, which city was not to be approached beyond the river Logo. In no case had these bounds been passed. The community, fully alive to the advantage of kindly relations with the Japanese Government, agreeably to the Consul's request, at once discontinued their amusement. Winter, spring, and summer of 1860 having passed, the shooting season came round



again, and as no Consular order had in the meantime been issued prohibiting shooting, nothing indeed on the subject having been heard, the amusement was recommenced, and gentlemen and officials, attached to the Consular service, also joined in it.

I have spoken of Kanagawa, as the port at which I had established myself, but as I now approach the subject of this account, and shall have to deal with every fact and feature of the case with extreme exactness, I must, to be accurate and clear, explain the position of this port, and of the town where foreigners lived, and where the trade was conducted.

Kanagawa, the port specified by the Treaty, is situated on an indentation in the west shore of the Bay of Yedo, about sixteen miles from the capital: the "Tokaido," or main high-road of the Empire, runs through this town. On the opening of the Ports in July, 1859, a smaller town, four miles off, called Yokuhama, containing the Custom House, warehouses and dwellings, had been built on the other and southern side of the Bay, for the reception of foreigners, and a number of native merchants had been hastily put there, in preparation for the new trade. From Yokuhama a road about four miles long, swept round the curve of the Bay, which is indifferently called the Bay of Yokuhama, or of Kanagawa, and joined the two towns of these names. By this it will be seen that Yokuhama is away from the main-road of the kingdom, and the

nature of the country immediately surrounding it is such, that by breaking down a couple of bridges, one on either side of the settlement, a large swamp and bend of a river being at its back and the bay in front, it would be cut off from the main land and isolated. A large fort overhangs the shore at Kanagawa, which might possibly command this settlement, and for these reasons, no doubt, with an eye to future difficulties, the Japanese Government, already regretting and trying to evade the Treaty, built the town.

After foreigners had been living there some six months, the English Consul-General (Mr. Rutherford Alcock)\* endeavoured, for the due observance of the Treaty and to defeat the cunning of the Japanese Government, to remove the location to Kanagawa. But property in land and houses in Yokuhama having been acquired by foreigners, money sunk there, and the trade in full working, and for many other local causes and considerations, this intended change of location of the foreign settlement was not effected. It is not my purpose here to recount the incidents and difficulties through which the port of Kanagawa, (by which Yokuhama is more generally known) and its trade have grown. In allusion, however, to the above question of the location of the foreign settlement, whilst respecting the intentions of the Consul-General, and attaching great

\* Mr. (since Sir Rutherford) Alcock, at that time H.B.M. Representative in Japan.

## 8 LEAVE YOKUHAMA ON SHOOTING EXCURSION.

weight and importance to the exact observance of the Treaty being urged and compelled on the Japanese Government, I must say that his failure in effecting this measure was owing solely and simply to its tardiness. By the order, that foreigners were not to settle at Yokuhama, but at Kanagawa, not being published and notified to all new-comers immediately after the port was opened, but deferred six months, till foreigners had established themselves in ignorance of the fact, and were pursuing their business, its execution was impracticable—not alone for the large pecuniary loss and serious derangement it would have caused individuals, but for other local causes which compelled consideration, but which it is needless to examine here.

On the afternoon of Monday, Nov. 26th 1860, I left my house at Yokuhama, accompanied by two Japanese servants carrying food and other necessities, with the intention of penetrating that evening some distance into the country behind Kanagawa, and on the morrow enjoying an early and long day's shooting. From Yokuhama I took boat to Kanagawa, the route across the bay being about two miles, about half the distance of the road, and arrived there, I began walking into the country as nearly as I could keep in one direction. After a couple of hours, and when some distance inland, I met Mr. Boyle (an Englishman who resided with the Consul at Kanagawa) on horseback, accompanied by another

gentleman, who at the time was on a visit to Japan, and also staying with the English Consul. Mr. Boyle told me he was returning from goose shooting on an extensive plain to which he directed me, and I saw a goose, the result of his sport, across the back of his horse-boy.

Following the direction pointed out to me by Mr. Boyle, I reached the plain he had mentioned at about seven o'clock. I walked some distance on this ground until the moon had risen, and then succeeded, after trying at various farm-houses and the like, in getting a shake-down at one for the night for the consideration of three itzabous (equal to about five shillings.) It was then nine o'clock. The owner of the house asked my name and address, which I did not hesitate to give him, after which he made me as comfortable as he could. After supper, which my Japanese servants had brought with them, and which consisted of good solid English food, I spent an amusing half hour with my host, over his fire, around which, in the principal room of his house, his whole family and hangers-on were collected. An Englishman to stare at, and his dress to examine, was a treat, rare and wonderful indeed to these poor people; and if now and then a hand not too clean held the different materials of my clothes I could feel no anger, it was so mildly done, as with a "by your leave;" nor was I roughly handled or rudely, as would likely have been the case, under similar circumstances, in China.

Their delight and amusement was vast, and their talk most lively, as I gave myself up to a general examination,—pulled off my boots, turned out the contents of my pockets, and gave portions of my supper for their grave and approving mastication. I shall not quickly forget the gentle courtesy and good-natured hospitality I met with from my humble friends of that night. I was given a separate room, where I threw myself on a mattress, and putting my revolver beside me (more as a matter of customary precaution than need in this case), was soon asleep.

Very early next morning I was up, and, as daylight broke, left the house, in which one of my servants remained in charge of my dogs and portmanteau. The other servant, and a native I had picked up who knew the country, accompanied me. I shot over the adjacent plain until about ten o'clock, when I returned to the house I had lodged at the previous night, and breakfasted ; after which I sent one servant to Yokuhama with my wrappers and portmanteau, in which, not thinking of danger, I packed my revolver. By this servant I sent three letters to friends in Yokuhama, asking them to dine with me at half-past six o'clock that day, and stating that I was returning from the place I wrote from, which I learnt was called Shenobarar, or by some such name.

I then bent my steps homewards with my horse-boy and two dogs, and drawing the charge of goose

shot from my gun, substituted those for pheasant. Beating the covers which looked likely on my way, I arrived without having discharged my gun, as nearly as I could judge at about two o'clock, at Kanagawa. I then called on Mr. Boyle, but not finding him at home, left for the landing place of Kanagawa to take boat for Yokuhama.

About half way between the wooden bridge, at the end of the street leading to the British Consulate, and the Hattobang (landing stage from the boats) I heard men crying out "Stop! stop!!"—and looking round I saw a number of two-sworded men running towards me. I walked up to my servant who was carrying a goose I had shot, and my gun, which I took into my own hands, and bid him follow me. But the Yarkuneen (Japanese officials) who had then just come up, placed their hands on him and made him stop. I stepped back with my gun over my arm, and asked them in Japanese what they wanted. I saw that nearly a dozen of them were two-sworded, and that they were accompanied by some men holding a short steel weapon. After asking them what they wanted, I noticed one Yarkuneen, who appeared their leader, give some instructions to his men, and they all approached me, evidently with a sinister object. I then cocked my gun, and pointing it from my hip, towards their leader, made him understand that if he came near, I should fire and he would be killed. They still advanced, and his men spread themselves out towards

## 12 SEIZED BY THE JAPANESE AUTHORITIES.

the left of the street to surround me. I sprang back, keeping my face towards them and my gun still pointed—they then stopped, and I again asked what they wanted.

Their leader then came forward a few paces alone, and I dropped my gun, holding it in my left hand, with the stock on the road. Pointing to his men, I was about speaking, when some men I had not seen, sprung on me from behind and seized hold of the gun, and at the same moment the body in front made a rush on me, and though I tried to keep the gun, I was at once pulled off from it. The men who sprang on me from behind must have come from a shop there, as I kept my eyes on the body in front, and none crept round. Immediately I was seized, I found myself entangled with ropes. Those who attacked me in front struck at me with a short iron hammer-like weapon and pulled me down. My struggles took us up to the right of the road, and my feet being pulled away from under me, I fell head foremost on the left side of the face, at the same instant I heard the report of a gun, only one explosion.—On falling to the ground, I fell towards the right of the street, and the explosion came from behind me; I did not see any flash, nor how the gun was fired.

Four men then seized my legs and arms, and bound them with ropes, first disentangling the cords that were about me, whilst they were doing this, another had his knee pressing down my back, be-

tween the shoulders, and twisting my scarf until I was nearly suffocated. I was quite unable to cry out. Having bound my legs, they twisted my arms round behind the back and roped them across the shoulders so severely that I thought them dislocated. They then let go my scarf, and several blows were given me over the head and body with some blunt instrument. After this, one of them jumped on me. They then lifted me up, carried me into a house and threw me on the ground. After being there a few minutes, I was taken into another room, and a Dutch interpreter of the Custom House, whom I well knew, came into the room, and looking at me, said, with some surprise, "Mosson."

I told him I had been attacked by the Japanese, and requested him to make the English Consul acquainted with my position, and asked the reason and object of my capture. He promised to inform the Consul, and on my asking him to have the ropes around my left arm loosened, as the pain I suffered nearly made me insensible, he bid some of them to do so. On my arm being unbound, I found it useless, and could not raise it, seeing which they placed a mattress against the wall, and raised me with my back against it, resting the arm on a wooden stand. I was parched with thirst and could hardly speak, my mouth being filled with blood, and I felt the blood from wounds in the head trickling down my neck and back. They gave me two or three mouthfuls of water, and had hardly done so, when a Yar-



kuneen entered the room, and seeing me thus kindly treated, ordered my arms to be rebound, which they did with even greater severity than before. The pain was so intense that I again asked for water, at which they laughed, and lifting me on their backs, I was hurried down to a house close to the beach, and concluded they were going to drown me.

I was, however, carried into a dark passage and put on the ground, all the windows were closed with shutters, and I could only just see a narrow slip of the wall of a house or godown adjacent. After being here for about an hour or so, they unbound both arms from behind my back, and I found the sudden relief made me almost insensible again. They, however, immediately tied eight cords round each wrist and ankle, and joined the wrists and ankles by another cord. The ends of the cords from each leg and wrist were attached to the girdles of four men, who sat two on each side of me. A fifth then tied another rope to that which joined my feet, and passing it over a beam in the roof, held the other end. In reply to my questions, they said the English Consul not being at Kanagawa, they had sent over to Yokuhama to seek for him, and that they were awaiting his return from the Custom House, where he was arranging the matter with the Governor. The men who held me did not wear swords. They informed me that several foreigners had been seized, or had caused some disturbance at Kawasaki\* the

\* A village, on the road to Yedo, eight or nine miles from Kanagawa, on the river Logo, the boundary of the port on that side.

previous night. I was offered bread, but refused it. They often brought me water and raised me to drink. They also told me that one of the Yarkuneen had been wounded in the arm by my gun, but that he was a small officer, and having acted badly would be punished.

At seven, I was hoisted on the back of a man, two men walked in front, holding the ropes attached to my wrists and stretching my arms straight, another pair came behind with cords from my legs, which were also straightened, so that my position was quite horizontal, with my stomach on the back of one of them. They carried me to another room open to the Bay, and set me down, when a heavy chain was padlocked to my left ankle. I was then tied down by hands and feet in a Japanese chair, or "Cango," and all their lamps and lanterns were extinguished, but as the moonlight was clear, I could easily see all objects.

I was then lifted on the shoulders of Coolies, and my chair being covered with oil-paper, was carried from the back of the house down a landing stage to the beach. Here they put me into a boat, which was at once filled with men wearing two swords. The boat was so crowded that many had to get out, and pull it over the shallow water. We soon came to a large boat, alongside which we stopped, and I was again lifted up, and thrown like an empty box into this second boat. I could see from the front of my chair, the oil-paper being torn there. This second

boat was filled with Yarkuneen, not only from the boat which had brought me alongside, but from two or three other boats which came up. After they had arranged my chair, and placed themselves round it, so that it could not be distinguished by any of the ships or foreign boats in harbour, they lifted the anchor. We went along for about a quarter of an hour, in what direction I did not know, and were then hailed by several boats with great secrecy, and anchored for another quarter of an hour, after which I was lifted into a small boat with four men in it; the screen of my chair blew aside, and I saw a Yarkuneen standing aside me with his hand on his sword, and I struggled to rise, but was thrust down and told to remain quiet. This smaller boat then pushed off, and after a short time the men jumped out and dragged her over shallow water some distance. They then raised me out of the boat, and carried me ashore, where a number of Yarkuneen and guards received me.

Two men again lifted me on their shoulders, and with a strong muster of two-sworded men carried me along a road I did not know. After many stoppages, when scouts came up and whispered their news, and after passing through two gates on the way, where a whispered password was given, we arrived in front of a square high stone-walled fortress, with a wide fosse of masonry around it. Two gates were thrown open, and I was carried into a court-yard filled with two-sworded men standing in

regular order. My chair was here put down, and I struggled to rise. I managed to raise myself on the left leg, resting on the right knee. They then unbound me from the chair, and with four men holding the cords from each limb, and a fifth pushing behind, they thrust me through a door about two-and-a-half feet square, then through a second, both being locked, and a strong guard accompanying us. Here I found myself in a stone passage about eight feet wide, surrounded by a wooden stockade, and I was at length forced through a third door into a large cage-like cell about two or three feet higher than the passage. One side was walled and it was roofed, the other three sides were formed of an open lattice work of strong wooden beams, the whole open to the air and wind, which played freely through it. Here, after refusing to answer any questions, they left me.

I tried in vain to procure some fire or hot tea to warm myself with. I had been exposed for many hours without my hat, my dress torn open, bleeding and bound in a confined position since the seizure. This den therefore was no pleasant place of rest, the weather being bitterly cold. I tried to produce warmth by walking to and fro, and lying down covered with a mat, but as the place was unprotected from the weather, except by a roof, I found all my exertions useless. At short intervals I had visits paid me by my jailors, who called through the bars, and wished each time to hear my voice, before they seemed satisfied I was still in their possession.

After, what appeared to me many hours, a number of men and jailors entered my cell with a Japanese doctor, who cut the hair away from the wounds in my head, and after bathing them with saki (native spirit) and water, put some lint and a plaster over them. They felt my limbs and body to see what order I was in, washed my right eye, plastered the face, and tied my head up in a piece of cotton. I asked one of the men if they intended killing me or not, but he said—"not that night, early in the morning following the Yarkuneen would see me and talk,"—at the same time pointing with his finger to his throat.

A half-hour after I heard the voice of the English Consul, and was released by that gentleman; it was then half-past two o'clock in the morning of Wednesday.

I learnt afterwards how my seizure had become known to the English community and authorities, and the steps that had been adopted, so fortunately for me, to procure my deliverance. It appeared that on the Monday afternoon a foreign resident, a German named Telge,\* had left Yokuhama, with four friends, and ridden to the small town of Kawasaki, about eight miles from Kanagawa. On their return Mr. Telge seems to have stayed behind, and been missed by his companions, who turned back and found him, being brought along in a Japanese chair,

\* A German under English protection, and registered at the British Consulate.

## HOW THE CONSUL HEARD OF MY SEIZURE. 19

a prisoner, in charge of several Japanese officials and men. When I said his friends found him, they in fact at first only discovered his two legs, clothed in unmistakeable European trousers, hanging from the chair, and, suspecting his position, they drew their revolvers and rescued him. On returning to the inn at Kawasaki, where they had stayed to bait their horses, they found Mr. Telge's pony, and then made their way home to Yokuhama without delay.

On Tuesday afternoon, at about two o'clock, this party was attending at the Consulate, where Captain Vyse was investigating the particulars of the occurrence, when a Japanese coolie, who had seen the attack made on me in the Tokaido, ran into the Court, saying that a foreigner was just being murdered in the street. Captain Vyse, and the gentlemen around him, immediately repaired to the scene of this new outrage. On arriving there the street presented no appearance of confusion, on the contrary, it seemed to wear a quieter and more deserted appearance than was usual; — noticing a number of Japanese passing in and out of one of the houses, the Consul pushed open the door, and walking in, found a wounded Japanese lying on a bed, surrounded by a number of officials and other Japanese. In answer to his inquiry they informed the Consul, that a foreigner had shot the wounded man in the arm, but said, they did not know who the offender was, and were quite ignorant of what had become of him. The Consul, since my release, described the house to me,

## 20 THE CONSUL FINDS THE WOUNDED JAPANESE.

and told me, that suspecting foul play, he spoke in a loud tone of voice, so that if near I might have cried out, and made known my whereabouts. I have no doubt that the house was the same in which I was at the time being held a prisoner, bound and bleeding—and the precautions which my captors took in carrying me to the rear of the building were evidently to prevent my discovery, nor leave a chance of my hearing what was going on.

The Consul, at this period of the day, found no clue to either the name or fate of the offending foreigner, and turned his attention to the wounded Japanese, who however refused to allow either of the two foreign doctors who had been brought in to do anything for him, nor would he follow their advice, though they zealously urged the importance and need of immediate amputation of the shattered arm. The Consul was informed that the wounded man's family were distant some two or three weeks' journey; that the permission of that family was necessary, and then an authority from the Japanese Governor, before the man himself could allow his arm to be cut off; though the two foreign doctors declared, that in their opinion the man's life would in all probability be saved if the arm were amputated. The Consul then sought for information from the Japanese Governor of Yokuhama, who however pretended complete ignorance of the occurrence, and could give no clue as to the name, or what had become of the offending foreigner.

The community of Yokuhama hearing the news of the affray, and finding that I had left home the previous afternoon and was still absent, became persuaded that I was the missing man. As evening approached, the friends, who had received my letters written from Shenobarar, asking them to dine with me that day, came at the hour appointed. Finding me still absent, their doubts as to my fate then became conclusive, the more so as no other foreigner was missing from the small settlement. Fearing the danger of delay, they urged on the Consul the necessity for adopting at once some steps to try and discover where I was held. Their general belief seems to have been, that I was a prisoner in the hands of the Japanese. The Consul appears to have gained some information or clue, and believed I was being detained at their prison: the Japanese authorities denied that such was the fact, and he urged that the Governor should accompany him in a search over the prison. This was strenuously opposed, and his right of search denied him. The Consul losing all faith in their representations, and convinced that such secrecy boded danger to one in their power, now determined to effect by display of power, and if necessity compelled, to demand by force, that which had been refused on his solicitations, and in direct violation to treaty agreement—the surrender of the offending and missing Englishman. With this view he begged assistance of the Prussian S.S. frigate “Arcona,” the only vessel of war then in harbour.



The Prussian Commodore immediately placed at the Consul's service a force consisting, I believe, of two howitzers and two boats' crews with marines.

Whilst these preparations were being made, the foreign community had armed themselves, and by the Consul's direction were placed at a bridge, about a quarter of a mile from the prison. The Consul, accompanied by the French Chargé d'affaires, M. du Chesne de Bellecourt, and various gentlemen attached to the Consular service, and taking with him the Japanese Governor of Yokuhama, proceeded to the prison. A Prussian Lieutenant of Marines was also with them carrying rockets, which, should the arguments of the Consul and diplomacy fail, were to be used as a signal for the crews of the Prussian boats, which were lying off the shore, to land, and for the advance of the party stationed on the bridge.

On reaching the prison the Consul was not allowed to enter, and the Japanese Governor still persisted in denying that I was within its walls. After representing the serious results that might arise from the use of force which was at hand, and of which the Consul determined to avail himself, if the right of searching for and taking possession of his countryman were still refused him, and which might possibly embroil the two Governments in serious dispute, and after showing the Japanese Governor the weight of the responsibility that rested on his head by persistence in his prohibitory conduct, the Consul seems, by his resolute and straightforward

action, to have shaken the resolves of the Japanese authorities, who then allowed the Consul to enter the prison.

My seizure had been so sudden, and the secrecy of my captor's movements so perfect after the occurrence, that I had been unable to do anything or leave any signs that might have made my position known, or lead to my discovery, and in the belief that the whole foreign community were in ignorance of my unhappy fate, I was awaiting events in the cage-like cell, into which the Japanese had thrust me. The uncertainty of that fate added bitterly to the terrible pain and distress of mind I endured. Unable to frame any means of escape or communication with my friends, with the conviction of certain, perchance a terrible death, which the gestures and manner of my jailors led me to infer, and realizing the false and distorted statements that might be circulated, to my obloquy and disgrace, by the Japanese, to account for my disappearance, and to hide all traces of me in obscurity, almost without hope, and with dreadful anxiety, I was awaiting the following morning. Great indeed, therefore, was my relief at hearing the Consul's voice, and I felt very happy and grateful to God for my sudden and unlooked-for rescue.

Captain Vyse told me that the Japanese had made a charge against me of shooting one of their officers, and on my being about to give him a brief outline of the real facts of the case, and of the outrage so

cruelly committed on myself, he at once stopped me, saying that the matter would be duly investigated; and he gave me to understand that I must consider myself in the meantime under arrest, as he had promised the Japanese authorities I should be held a prisoner at his Consulate till such inquiry was completed. We then proceeded to his house, a temple at Kanagawa, where a room was assigned to me. It was then about half-past three o'clock in the morning of Wednesday, 28th November.

During the two following days I was unable to sit up, the bodily injuries inflicted by the Japanese completely prostrated me, and rendered the least movement extremely painful, racking every limb and nerve, and causing each breath to be drawn with trouble, so much so, as to create fears of internal damage. During these two days I was quite unable to leave my bed, or to take any food, though suffering great thirst. On Thursday I heard that the wounded Japanese, named Oyakunetaro, was expected to die; that his depositions had been taken down in the presence of his authorities and the English Consul; and that he declared I had shot him, and was therefore his enemy; that if he lived, it would be with the wish to see me die. He was then prevented by the Japanese around his bed, from saying more; but after signing his declaration, he added, that as he saw he must die, he left to his three brothers and family the execution of his vengeance.\*

\* See No. II. in Appendix.

On the night of Thursday, hearing that the inquiry would likely commence on the ensuing day, or on the one after that, I wrote, as connectedly as bodily pain and nervous depression would permit, a full statement\* of my proceedings from the time I left Yokuhama, on Monday, 26th November, till I was rescued by the Consul from the Japanese prison on the Wednesday morning following. At the foot of this statement I placed my name under oath, duly administered on Friday by Captain Vyse, who affixed the Consular seal. Acting on the advice of my friends, who were allowed to see me without any restriction, and who had read my statement, and were acquainted with the depositions of the wounded Japanese, I laid a formal charge† against the Japanese Government for the outrage they had committed on my person, in violation of treaty engagement; and as I should have been compelled to leave the country, and my business and prospects would have been greatly damaged, I claimed a sum of \$30,000 for the injuries that had been inflicted on me, and for the serious illness and mental and bodily torture I had undergone. I stated that I had been guilty of no breach of law, and had observed every notification and Consular order which had been issued for our guidance; that I was ignorant of any charge that could be brought against me, but was ready to offer security to answer any, when

\* See No. I. in Appendix.

† See No. III. in Appendix.

26 CLAIM COMPENSATION FROM THE JAPANESE.

legally called on to do so, and contended that I was illegally detained.

All this I mentioned in a letter addressed to the Consul,\* requesting him to forward it to the Consul-General, Mr. Rutherford Alcock, Her Britannic Majesty's Minister at Yedo, with a request that he would exert his influence to urge it on the consideration of the Japanese Government. Both this letter and the statement under oath I gave Captain Vyse, who handed them at once to the Consul-General. This Minister, on hearing the news of my attack and capture, had hastened down from Yedo, and was then staying in the Consul's house, the same in which I was detained.

After midnight on Thursday, the Consul entered my room, and, seating himself on the bed in which I was lying sick, told me, that in consequence of the repeated demands of the Japanese authorities, Mr. Alcock had determined that I should be returned into their hands on the following Saturday;—that they had agreed to build me a wooden house within the prison walls, where I should be allowed to have my servants daily from six o'clock in the morning till six o'clock in the evening to attend on me, and that I might at once give instructions for removing from my house at Yokuhama to the prison any furniture or necessaries I might require;—that all correspondence would then pass open through the Consul's hands;—that the Japanese had

\* See No. III. in Appendix.

promised to treat me with care, and would be answerable for my safety ; and that I was to be detained there pending the investigation of the occurrence of the previous Tuesday. To all who were acquainted with the history of the previous eighteen months, or had been resident in Japan, the imminent danger in which such a return into the Japanese hands, after the events of the previous two days, and the sworn vengeance of the wounded official, would place me, was evident. We had seen, during that year and a half, men horribly murdered,—hacked to pieces whilst peaceably walking along the streets ; quiet, inoffensive men cruelly butchered by native malice, in revenge for fancied wrongs, for punishment, loss of office, or shorn honours, the results of foreign complaints,—that is to say, in consequence of native neglect, insult or wrong having been brought to light through the accusations of foreigners. If these causes were sufficient to arouse so dreadful a revenge, how much greater provocation would this wounded man, his family and adherents consider the loss of a limb, perhaps of a life. Knowing the bitter animosity of the native disposition, the law of revenge—which by them is as sacredly adhered to as any religious observance, and having myself witnessed its terrible results during my residence in the country, the Minister's order aroused in me every feeling of astonishment and indignation, and a determined resolution to resist it by every means in my power.

In answer to my inquiries, the Consul informed me that there was not a single vessel of war, not even a dispatch boat, or a gun-boat, either English or of any other power, in harbour. There was not a ship, a soldier, or gun the Minister had at his command, no show of force of any kind, which might have been held to afford a semblance of protection—and yet my person was to be handed back to those who had dealt so treacherously with me, and who had sought by every means to evade the Consul's search after me. I felt that my life was about to be made the test of Japanese truth, and of the value to be attached to their professions of good faith and honour. Having already experienced their treachery, their cruelty and their falsehood, I put no belief in their promises; I felt convinced my safety would be imperilled, and once within their prison walls I should be completely at their mercy. Under these circumstances, and in the absence of all vessels of war, which might by their presence have been held as a salutary check on the action of the Japanese authorities, I considered the order of the English Minister not alone cruel, but, by jeopardizing my personal safety before any offence had been proved against me, illegal—it appeared to me, he was arrogating an authority which English law forbids, and assuming a despotic power, which I was not bound to obey.

On reaching the Consul's house, on the night of my rescue, I had promised to remain without at-

tempting to escape ; this, however, my physical and mental suffering and utter prostration would have rendered nearly impossible, but after hearing the cruel order for my removal back to the Japanese prison, I at once withdrew my parole. I then wrote to my friends at Yokuhama of this new danger, craving their advice and assistance, and stating my determination to escape, and throw myself on their protection, rather than to remain passive, and be placed within the walls of a native prison. The news this letter conveyed, carried over to Yokuhama by a servant, but a few hours after midnight, roused in that community like feelings of indignation and astonishment to my own. On the morning of Friday, several of my friends came over to the Consulate to protest against the Minister's order being carried into execution, and a deputation of them waited on Mr. Alcock for that purpose ;—they were prepared to propose that I should be put on board the "Henry Ellis," a merchant vessel in harbour, where they guaranteed I should be safely held a prisoner, and they were ready to offer bail for my duly appearing whenever required. The Minister dismissed them, after refusing to accede to their proposals, and after expressing himself in terms of harsh reproof, at their attempting to alter his decisions. On leaving they called into my room and bid me take no action, but remain quiet, as they were resolved not to permit an order so full of danger and cruelty to be carried into effect.



Late on the same night Mr. Consul Vyse entered my room and informed me that the Minister had withdrawn his order, and that I was to remain where I then was. On Saturday morning Captain Vyse gave me back my statement under oath, and letter of claim against the Japanese Government, both of which he had placed in the hands of Mr. Alcock, who, however, would not entertain them, and who had ordered that they should be returned to me. On my showing the Consul the extreme hardship of my position, and the urgent necessity for my leaving the country, by which my business would be destroyed, and my prospects ruined, as I could not after the wounded man's depositions remain with any safety in Japan, but should be compelled to leave as promptly as possible, Captain Vyse told me that I might, if I thought proper, hand my statement and letter of claim into the Court, at the conclusion of the investigation that was to commence later in the day. This particular, though not materially affecting my case, should be carefully borne in mind, as in the verdict afterwards passed on me, the Minister, alluding to it as a proof of my wilfulness and error, states that my affidavit was returned to me, with a recommendation to withdraw it. This being a misstatement of the real fact, I give it my direct contradiction. My recollection of the particulars and events of that period is exact, full, and vivid; therefore, in maintaining this assertion, I have the satisfaction of an unclouded and perfect remembrance.

This portion of the sentence, which, after a lengthy investigation and trial, was passed on me, is the only one where I feel any remark is required from myself, to lay open the truth, and to break down a wrong presentment of the real facts. The events following, and the perusal of the various circumstances and proceedings that attended this sentence, will better define its justice, its sophistries, and peculiarities, than any opinions or arguments I might feel inclined to bring forward here.

On Saturday, December 1st, the Court of Inquiry was opened. The Consul, Capt. Vyse, presided; Hosokaro, the Japanese mayor of Kanagawa, attended him, and the several officers and men who attacked me underwent examination. The inquiry was tedious and difficult; each question being placed by the Consul in English, then translated by the Consular interpreter into the Dutch language, and after that put to the witness in Japanese, by a native interpreter, named Ishebashi.

By this means I had the advantage of ample time to write down in extenso, the whole details of the proceedings and evidence, and I have to congratulate myself on the chance, that permitted to me so important a matter. For unless I had noted down, word for word, the whole inquiry and subsequent trial, I should have been without material for framing an exact or practicable defence, which otherwise must have been at the best but vague and general, nor should I have been able after this

lapse of time to convey so intelligible a conception of the peculiar features and character of this portion of my case, as the perusal of the reports of the proceedings at once affords.

It is not my object here to give an elaborate or lengthy review of this inquiry. I should state though, that the Japanese mayor, Hosokaro, commanded in person the body of men who attacked me on the Tuesday previous, and that he was attended by an official named Nagasakar, who was also present at my seizure. These sat with the Consul to watch the case on behalf of the Japanese Government, and were themselves my prosecutors, bringing forward the charge of wilfully shooting the wounded Oyarkunetaro, an offence which they considered so outrageous, as to compel my immediate capture. They made no allusion to the treacherous secrecy and illegality of my subsequent imprisonment at their hands, and refusal to my Consul, and every means were essayed to substantiate their charges against me.

When all the Japanese witnesses had given their evidence, and the inquiry which had lasted over six days was ended, I handed into Court my statement under oath, and letter of claim against the Japanese Government, both of which I requested might be placed in Mr. Alcock's hands for presentation to the Japanese Government, and I further requested they should be recorded in the archives of the Consulate. Notwithstanding the nature of the evidence adduced

at this investigation, which will be understood by reading over the reports\* of the inquiry, appended in full, the Consul thought proper to place me on my trial for the charges brought forward, which were embodied in an indictment of three counts.† The prudence or the justice of the Consul's determination I have no wish to dispute, though its severity and hardship pressed on me heavily. Viewing the strange and bitter animosity, the haste and earnest desire of the Japanese Government to convict and have me punished, I must admit that the Consul's action may have been and doubtless was justified and explained by local circumstances and native exigencies and necessities, nor should too hasty or harsh an opinion have been ventured, if a certain license was allowed my prosecutors, and every means and time given them to substantiate their complaints or charges, for the full satisfaction of the Japanese Government. Placing me on my trial, may therefore have been a wise and prudent action. While acknowledging the possible expediency and prudence of this decision, I cannot however too earnestly, too warmly, too vehemently protest against the oppressive cruelty and flagrant injustice I met with, from this time forward, from H.B.M.'s Representative in Japan.

On the 12th December, I was placed on my trial, on the three following counts :—‡

\* No. IV. in Appendix.

† No. V. in Appendix.

‡ No. V. in Appendix.

1°. For breaking the law of Japan in having shot game.

2°. For assaulting and resisting Japanese officials in discharge of their duty.

3°. For shooting at Oyarkunetaro, with intent to do him grievous bodily harm.

In accordance with H. M.'s Order-in-Council, then existing, three British merchants were chosen by the Consul to sit with him as assessors to hear the case.

The trial commenced with the examination of the two medical men, who gave evidence respecting the nature of the injuries sustained by myself and the wounded Japanese. An English solicitor\* being on a visit at Yokuhama, kindly conducted my case, and examined the witnesses and the Consul afterwards, on behalf of the prosecutor, (the Tycoon of Japan), cross-examined them. When the Doctors' depositions had been taken down, Hosokaro and several other Japanese witnesses, who had given evidence at the preliminary inquiry, were cross-examined, and three or four English residents of Yokuhama, who had been in the habit of going out shooting were called for the defence, and afterwards cross-examined by the Consul.

On the conclusion of the examination of the witnesses, which had continued over several days, I requested that an interval of two days might be

\* Mr. Cooper Turner, Crown Solicitor, Hong-Kong : since dead.

granted me, for preparing my defence, the matter in evidence being very full. This permission was granted me by the Consul, and the Court adjourned for two days. Acting on the advice and wish of Mr. Cooper Turner, I prepared and wrote my defence myself, as no legal knowledge was required to deal with the material before me, which afforded ample proof to overthrow the charges against me, nor would have been improved by the introduction of legal forms or technicalities.

On the 16th December, I read my defence, and the Consul and the three assessors were left to conclude on the evidence of the case. After two hours deliberation, the Consul re-opened the Court, and stated, that in consequence of the assessors and himself being unable to form an unanimous decision, the matter, agreeably to the provisions of H. M.'s Order-in-Council, would be referred to the Consul-General at Yedo; and that, on the verdict of the Minister being sent down from the capital, we should be duly informed of it.

During the investigation and trial of this case, the first which had taken place in the Consular Court where Japanese had been subjected to the English method of questioning and cross-examination, the native character was strongly brought out, and the worth of Japanese testimony arrived at. To those who were present during the progress of the case, and who witnessed the conduct of the men whilst under examination, and the shameful action of the

### 36 . CONDUCT OF JAPANESE DURING THE TRIAL.

superior Japanese officials, who were there as prosecutors, no perusal of depositions was required, to proclaim to them the dishonesty of the proceedings, the falsity and rough fabrication of the prosecution, or the constant gross contradictions and perjury of the witnesses. On the first day, the preliminary investigation was held in a closed Court, which however was afterwards, on my protest and request, made a public and open one. At the commencement of the inquiry, much delay and trouble was occasioned by the Japanese officials objecting to my presence during the investigation, saying, that none but peasants or coolies could be examined if I were permitted to remain ; then wishing that a screen should be placed around me, so that they might not see that I was in the room, by which means their peculiar notions of etiquette and the punctilio and respect due to their office might receive no shock. But on Mr. Vyse maintaining the forms and procedure of an English Court, and the right of a prisoner to hear and be present at all the charges made against him, the Japanese officials agreed, as they could not procure my dismissal, at all events to ignore my presence, and pretended they did not see me :—thus upholding their peculiar ideas of honour and preserving from injury or offence the high prerogatives and barbarous customs of their country.

This point being settled, a fresh cause of objection and complaint arose, on their noticing that I was busily employed making notes and writing down all

that passed. They then warmly protested against the indignity of their being questioned by a prisoner, or cross-examined at all, and of the depositions of themselves and of their witnesses, not being received at once and without doubt:—stating, that it was the custom in a Japanese Court for the principal official, who brought forward the charge, to make a statement of the whole case, to which he attached his seal, and to which his retainers or witnesses subscribed their mark; that neither he nor they were subjected to the degradation of cross-examination—a rough ordeal, which they appeared especially to dislike, as an indignity and affront to their rank and truth, perhaps, but to the strong powers of which, as the case progressed, they nevertheless seemed to attach a very respectable importance. The strange conduct of these officials was very remarkable. They never hesitated to prompt a witness by gesture, or movement, nor even when the difficulty required it, to guide by word of mouth and lengthy argument. As these conversations, in the midst of examination, were carried on in the Japanese language, it was impossible to learn the exact nature of the interruptions, which could only be conjectured by their effects on the witnesses, and as these were very plain and palpable, the character and object of these constant, and by no means too modest promptings, was evident. The Consul repeatedly cautioned the prosecutors, and dismissed more than one wit-



ness, for immoderate and rather too extravagant contradictions and falsehoods.

One morning, on the late attendance of the Japanese officials, the Consul, who from some source had received information, told the native officers, that he was acquainted with the cause of their want of punctuality, saying that he had learnt they had been engaged that morning preparing and instructing their witnesses for the day's work—cramming them up in fact. The appearance of the witnesses whilst under examination, was a striking feature in the trial; their puzzled faces, on hearing the translation to a cross-question leading to other portions of their evidence, their doubt as to what kind of answer ought to be given, and their glance of inquiry at their head officer, or the look of pain and surprise when that head officer's interruption stopped or altered the interpreter's translation of the answer, might under other circumstances have been absurdly grotesque and comic, they then only bore to me a serious and most important significance. No single witness's evidence and cross-examination bears the test of scrutiny, but a cursory glance is enough to show its contradictions, its falsehoods and deformities. In those minutiae of detail, which determine, and so often eliminate, as it were, the truth, the evidence of one witness is opposed to that of another. In one broad statement alone did they agree, namely, that I myself shot the wounded offi-

cial; but by an analysis of other portions of the evidence bearing indirectly to this fact, the truth of the statement is shaken; and its inconsistency with other and conflicting particulars point out its impossibility. Later in this short history, the falsehood of this part of the depositions will be proved, and all doubt as to the shooting of the wounded Japanese, if doubt remain, cleared away.

In my defence\* I solemnly declared my innocence of the charges brought against me, and the entire truth of my statement of the facts; and by comparing portions of the evidence I showed the perjury of the witnesses. I called attention to the various incidents of, and conduct of my prosecutors in the trial, and the opinions and cautions so repeatedly offered them by the Consul. I pointed out the improbability of my drawing on myself the immediate attack of a large body of armed men, and the overhanging danger of the vengeance of an infuriated and injured family by wantonly shooting an inoffensive man. I showed that the evidence had not established the existence of any Japanese law prohibiting the shooting of game, and that if such law had existed, that no consular restriction had been placed on the amusement; that although a year previous the propriety of desisting for a time from the sport had been urged and acknowledged, its subsequent revival and the participation of the consular servants and attachés had justified

\* No. VII. in Appendix.

the belief of its legality. By reference to the Treaty I proved the illegality of my seizure, and showed by that act and by the cruel conduct of the Japanese afterwards that the Treaty had been set at defiance and violated on three important points.

The Treaty provided that no Englishman was to be arrested by the Japanese authorities without a warrant, (with the Consular seal attached thereto,) unless in the open commission of an offence; but in either case, that the offender was at once and without delay to be brought before his Consul and be dealt with according to English law; and that no undue severity was to be used in his capture. These three agreements had the Japanese broken, and in addition had refused the Consul the right to search the prison and take possession of my person, by which another specification of the Treaty had been ignored. I pointed out that to inquire my name, and learn who I was, there was no necessity or need for the advance on me of a number of armed men.—I showed, that the Japanese kept a register of all the servants in the employment of foreigners, and that, through the native who accompanied me, the required information could easily have been procured and any charge preferred against me. I alluded to all these facts and showed the savage cruelty with which I had been treated, the secrecy and treachery with which I had been dealt with, and the natural act of standing on my defence, after the experience and events of the pre-

vicious eighteen months, and of believing that the men who attacked me had evil intentions and were assassins, and that my life was in danger. I once more solemnly assured the Court of the truth and fidelity of my statements, and contended that the charges brought against me, were converted against the Japanese authorities into acts of illegal and unprovoked assault, of barbarous outrage and cruelty, in violation of every understanding and the direct provisions of the Treaty. I contended that I ought to stand there the prosecutor and not the defendant, and maintained that, in consideration of what I had undergone, and the pecuniary loss and commercial ruin I should in consequence have to sustain, my claim was a just and reasonable one, and should be acknowledged and urged on the Japanese Government by our Minister.

On the 20th December, having been informed that the Court was ready to pass sentence, the Consul proceeded to read the verdict,\* which had been received from Yedo from the Consul-General, Mr. Rutherford Alcock. To my great surprise and distress, the Minister decided that all the charges had been proved against me, and after a long preamble and argument, and after alluding in terms of reproof to the dissent of the assessors, which had been forwarded to him, he sentenced me to pay a fine of \$1000 (one thousand dollars),† to depor-

\* No. IX. in Appendix.

† Equivalent to £250, two hundred and fifty pounds sterling.

tation from Japan, and to an imprisonment for a term of three months in the criminal gaol of Hong-Kong.

I shall not dwell on the justice, or the tyranny, the oppression, or merits of this verdict,—its sophistical arguments, its perversions of truth, its misrepresentations and distortions of facts, or its blind partiality and absurdities. By declaring its character in these strong terms, and by thus describing its nature, I may be accused by some of heat and personal feeling. To those I would say, hear the history of the open Ports, read H.M.'s Order-in-Council, and the Treaty? if you have the opportunity, question any one who was present during the occurrence of these circumstances? and if they have examined this detailed history, I am satisfied that the truth of what I have above written will be manifest to them, and that they will arrive at the same conviction.

In Her Majesty's Order-in-Council, to which I have just alluded, the power to punish any prisoner by fine, deportation, or imprisonment, is defined, and the various limits and the severity of punishments allotted to respective descriptions of offences. Her Majesty's Minister in Japan had power, and was invested with authority to punish, according to his judgment, under this Order-in-Council alone. Nor had he any discretion to adjudge a heavier punishment for an offence than that defined by the Order-in-Council. In the event of a Consular award being dissented from by Assessors, the Consul-General on its appeal

to him, had power to confirm, or vary, or remit altogether that award. In no case was he vested with authority to add to, or increase a Consular award of punishment. Although no Consular sentence was passed on me, as in regularity it should have been, the matter was referred for appeal to the Minister, as if such sentence had been passed, and the Consul-General in his verdict states that he confirms the award of the Consul (the utmost severity he had power to inflict) ordering the fine of \$1000 to be paid over to the wounded Japanese "Oyarkunetaro," and in addition adds a term of imprisonment of three months in the Criminal Jail of Hong-Kong; and on the warrant forwarded to the authorities of the Hong-Kong prison, the Consul-General had furthermore added, that I should be deported thence to England.

How this last punishment could have been inflicted, or by whom the order could have been executed, is very problematical and doubtful, since no one in Hong-Kong was invested with any Commission or office, that would have authorized, or provided in any way for the management or execution of the order. These particulars were necessary to explain the grounds on which I have impugned the reasonableness of the Minister's verdict, and have held it to contain absurdities. Though the reader may have decided on the injustice and cruelty of the verdict without the above outline, the absurdity of its additional punishments would not necessarily have been concluded. The sophistry and false ar-

guments adduced by the Minister to strengthen his decision will be more apparent and evident as the case proceeds.

On the verdict being read by the Consul, and on my giving an order for the payment of the fine of one thousand dollars, against which, however, although I verbally protested, the Consul refused to permit the words, "under protest,"\* to be attached, I was at once handed over to an officer of H.B.M.'s S. "Pioneer," and under a strong guard of marines marched down to one of her boats and taken a prisoner on board her.

H.B.M.'s S. "Pioneer," a six gun screw dispatch steamer, had arrived in harbour after my rescue and before my trial commenced, bringing passengers from China, with some of whom I was well acquainted. Immediately on her arrival, orders were sent on board her, from the British Legation at Yedo, off which town she had anchored, to make preparations for receiving a prisoner. This order seems to have leaked out and become generally known among the passengers, one of whom acquainted me with the fact. The proof of this is neither impossible nor difficult, and it is significant of the justice of a verdict, preparations for the execution of which were ordered before the commencement of the trial of the prisoner.

I have alluded to the tone of censure, in the verdict, in which the Consul-General thought proper to ad-

\* No. X. in Appendix.

vert on the dissent of the Assessors. These gentlemen feeling the reproofs of the Minister were undeserved, addressed to him the following letter of protest.\*

"Yokuhama, January 7th, 1861.

"YOUR EXCELLENCY,

"In your decision, in the case of the "Queen v. Moss," referred to you, in consequence of the recorded dissent of the Assessors to the judgment of the Consul, you animadvert upon our conduct as Assessors in a manner which calls for a reply.

"Your Excellency states that it is obvious that we were not cognizant of the exact nature or limits of our functions as assessors, and that the least that can be expected of assessors is that they should inform themselves, before undertaking the responsible office to which they are called, of what its duties consist.

"In reply to these remarks we have only to say, that we undertook the office of assessors not as a matter of choice, but of duty, and under the idea that we were to be guided in our decision by what we considered just, and not by a knowledge of law, to which we make no pretensions.

"We heard and gave our closest attention to the evidence, to the defence of the prisoner, to the summing up of the Judge; and after the most careful consideration, we found we could decide in no other way than by a dissent from the Consul.

"We found the prisoner not guilty; but we neither did nor could decide, as your Excellency affirms, upon the amount of punishment to be awarded; and it was only at the express desire of

\* No. XI. in Appendix.



the Consul, who returned one of our minutes on account of the omission, being pronounced on his innocence or guilt.

"If, therefore, we were irregular, the irregularity rests with him.

"Your Excellency says, that we hold the accused faultless, because he saw others equally offending. We cannot allow that the accused did offend by going out shooting, as the Consular notification of 1859, which your Excellency construes into a prohibition, and attaches so much importance to, contained merely a request to abstain from shooting while the question was in abeyance.

"This notification the prisoner observed, until members of Her Britannic Majesty's and other Consulates, who it was natural to suppose would be the last to break what they deemed a law, had repeatedly been out shooting; and we are confirmed in this belief, by the fact of the Secretary of your Excellency's legation at Yeddo having come down to Kanagawa, with your Excellency's consent, for the purpose of shooting, on the very day on which Mr. Moss was seized.

"Regarding the prisoner's liability to arrest, your Excellency states, that whoever offends against the law may be arrested in the act and taken before the Consul.

"This, however, was not done in this instance. Mr. Moss having been seized while quietly walking along a public street, and considering that shooting was an amusement in which so many of the foreign community almost daily participated, and that in going to and returning from the shooting ground they passed through Kanagawa and Yokuhama without ever having been molested in any way, he might well be at a loss to imagine why or by whom he was followed.

" It is asserted that the sole object of the pursuers was to ascertain the name of the prisoner, a statement we totally disbelieve ; not simply because some of the witnesses, who were present, denied having heard any such question, but from its being highly improbable that the officer, who is said to have made the inquiry, knew so much and no more English. Granting, however, such to have been their object, one officer would have been sufficient ; and we think any man would naturally stand on the defensive on finding himself pursued by a number of men, particularly any man acquainted with the occurrences at this port during the last eighteen months.

" In so far as your Excellency states, that the prisoner's own statement convicts him, we maintain that you strengthen our opinion that it was a plain and straightforward one. He admits that he cocked and pointed the gun, an admission which your Excellency receives as a sufficient proof of his evil intent.

" This he declared was done with the object of intimidating and keeping off his pursuers, as he had no intention to shoot, well knowing that the gun once discharged he would be helpless, with no other effect than outraging his opponents ; and he further solemnly declared that the gun went off after it had been wrested out of his hand.

" This we conceive to be the real state of the case, and no arguments of your Excellency, after the evidence of such perjured witnesses as we listened to, can shake in the very least degree our belief in its truth.

" Your Excellency is doubtless aware that one of the witnesses, upon whose evidence the charge of wounding was principally founded, was publicly cautioned by the Consul, in the middle of his exa-

48 THE ASSESSORS' LETTER OF PROTEST.

mination, and told that his answers would probably form the subject of inquiry at Yeddo.

"The Consul having informed us that copies of all documents connected with this case would be forwarded to the Secretary of State for Foreign Affairs, we have to request that your Excellency will cause one of this letter to accompany that of your animadversions upon us.

"We have the honour to remain,

"Your Excellency's

"Most obedient humble Servants,

(Signed)

"JOHN B. ROSS,

(Signed)

"A. J. MACPHERSON.

"To His Excellency RUTHERFORD ALCOCK,  
H. B. M.'s Envoy-Extraordinary and Consul-General in Japan."

Rightly to appreciate the justice of the Assessors' reply to that portion of the Consul-General's verdict, bearing on the letter which Mr. Consul Vyse had sent to the foreign residents in the autumn of 1859, requesting them to desist from shooting, it is necessary that attention be drawn for a moment to the Order-in-Council. It is therein decreed that a copy of all consular rules and regulations should be affixed and exhibited in some conspicuous place in the public office of the Consul; and that no penalty could be incurred or enforced for the breach of any rule or regulation till it should have been kept so affixed for one calendar month. Mr. Consul Vyse's notification was never thus affixed; when circulated amongst us it made no pretension to an order prohibiting shooting, nor did it hint at punishment if not accorded

with. After the day it was sent round the small community it was not seen again, nor shown to any one. Strangers visiting the Port, or establishing themselves there, only heard of it afterwards by chance in conversation with the earlier residents. It was in fact nothing more than a letter from the Consul pointing out the propriety of our not continuing an amusement which appeared to give dissatisfaction to the native authorities, with whom it went on to say the question was being talked over, and requesting us to desist for a time while the matter was in abeyance. It was clearly neither its object or intention at the time to be considered in the light of a Consular regulation, nor by its treatment after circulation, by its non-exhibition in the office of the Consul, could it have been construed into an official order. Yet to strengthen his verdict the Consul-General misrepresented these facts, and from the above outline it will be seen with what degree of truth he attaches to this letter from Mr. Vyse all the importance, the weight and the character of a Consular regulation, whose infraction not alone reflected discredit and disgrace on me, but carried with it heavy penalty and punishment.

A month had nearly passed since I had left my house in Yokuhama, during which time I had been detained at the British Consulate at Kanagawa. Whilst there I had been so constantly and laboriously employed in the proceedings of my trial and the inquiry, that attention to my own business was im-

possible, and having managed it single-handed, with the aid of Chinese servants alone, and without any European assistant, it had been suddenly brought to a stand still. On arriving on board the "Pioneer" I was informed that I should be allowed to go on shore to my house, under a guard of marines, on alternate days, for the purpose of arranging my affairs, and should have to return on board at sunset. On the 22nd December I availed myself of this permission for the first time, and once more stood in my own premises.

A month's forced absence and neglect had left their mark.—I will not dwell on details which, although in themselves but of trifling moment, bitterly impressed me with the hardship and cruelty of my position. The weakness of an attachment to a few canaries, to a dog or horse, will perhaps meet with the contempt of the practical world,—and if the sight of my feathered friends starved and stiff in the bottom of their cages, or my horse and dogs, gaunt and looking sick, roused in me indignation at the oppression with which I had been treated,—if the little dead bodies of a few birds, that had often enlivened and amused me, caused a momentary sorrow and bitter feelings of anger, but short time was given for noticing such trifling injuries;—matters of business and of graver importance at once demanded my serious attention. A month had produced and accumulated its work. Goods had arrived and been housed for me by my friends, much that was current at the time of my sudden

seizure had to be looked to, and a confusion of affairs was before me.

Although the exact date of my deportation was not fixed, it could not be far distant, awaiting, as it was, the departure of a vessel of war, several of which, under the command of Rear-Admiral Jones, were then in harbour. My land, premises and property would have to be disposed of, as, under a Consular regulation, a man under deportation could no longer hold possession of ground in the settlement, goods and merchandize would have to be sold, debts and outstandings recovered, and the whole working of a business, which one month previous was flourishing and developing, had now to be brought to an end, and the results of two years' labour and exertions destroyed.

The few hours that I was permitted to stay on shore the first day, left me unadvanced in the settlement, or even on the road to the arrangement of my affairs. The visits of sympathising and kind friends, and the confusion and complication of work to which I found myself opposed, and which required immediate and careful arrangement, left me unable, on this first day, to accomplish more than the collection of various papers and documents, which I hastily put into a portmanteau and took on board with me. I had kept no regular books of my business transactions, having lost, by shipwreck, those I had sent out from England, and although I had lately received from home others ordered in their place, I

had not as yet opened them or begun to use them : it was not, therefore, as may be supposed, an easy task to discover at once my exact business position and the value of my property. Looking back on the labour and great anxiety I was under at that time, and my distressed agitated state of mind, I feel Grateful and Thankful for the health, which enabled me to overcome the difficulties that surrounded me, and to pass through and quietly bear the severe trials of my unhappy and unmerited position.

On my going on shore the second time, I was informed by the Dutch Interpreter of the English Consulate that the "Pioneer" was about leaving Yokuhama for Yedo, and that the Consul had desired him to say, if I wished to stay in harbour, so as to be at hand for the settlement of my affairs, the Commander of the "Pioneer," on making known to him my wishes, would arrange for my temporary custody on some other vessel. On returning on board that evening, I addressed a letter\* to the Commander H. A. Reilly, stating the above, and requesting to stay in Yokuhama Bay. To my surprise, he replied, that as a prisoner under the warrant he held, it was neither in the power of the Consul to offer, or myself to accept the option referred to:† and on the following day, (26th Dec.) we steamed up to Yedo, in consort with the Admiral's ship and two others of H.M.'s vessels of war, and in the afternoon an-

\* No. XII. in Appendix.

† No. XIII. in Appendix.

chored off that town. On the 30th December I received a letter\* from Mr. Consul Vyse, written from the British Legation at Yedo, informing me, that the 3rd January following, was the day fixed for my deportation in one of H.M.'s ships to Hong-Kong, and that Mr. Rutherford Alcock trusted my affairs were already settled, and if not, that I would take the earliest steps for making arrangements for that purpose. To this I replied,† that I had been unable to arrange my affairs in the short time at my disposal in Yokuhama, and that in my present position, on board the "Pioneer" in Yedo Bay, it was impossible for me to take any further steps for that purpose; that the date fixed for my deportation would seriously increase the very heavy loss I should have to sustain:—I enclosed copies of the correspondence which had passed between Commander H. A. Reilly and myself, in consequence of the Consul's message through the Dutch Interpreter (Mr. Blekmann), and stated that I had been put to unnecessary inconvenience and personal discomfort, having made no provision, in linen, clothing, &c. for leaving Yokuhama. Captain Vyse in reply,‡ said, he regretted that I had been misled by Mr. Blekmann, who, he assured me, had acted on his own responsibility, and without authority.

On the 1st January, 1861, the "Pioneer" and H.M.'s ships returned to Yokuhama, and I then

\* No. XIV. in Appendix. † No. XV. in Appendix.

‡ No. XVI. in Appendix.



heard that I was to be transferred for deportation to H.M.S. "Imperieuse," a 51 gun steam frigate, the flag-ship of the Admiral. I learnt that this vessel was infected with smallpox, and that several of her crew were on her sick list suffering from this dreadful disease. Having always had a fear of this infection, I addressed a letter \* to the English Consul, protesting against my being sent on board that vessel. To this letter I received no reply, and no heed or notice was taken of my protest.

In consequence of local excitement and the doubtful appearance and safety of foreign relations with the Japanese, the departure of any naval force was delayed, and on the evening of the 5th instant I was transferred to H.M.S. "Imperieuse." A further delay was caused by the threatening aspect of affairs, and the representations of the Japanese Government, until the 10th January, early on which day the "Imperieuse" started for Hong-Kong. After the "Pioneer's" return from Yedo, and until I left in the "Imperieuse," I was permitted to go on shore to my house, several times, in which interval I succeeded in selling my land and premises, and various other property, and in leaving in the hands of one of my friends (Mr. Samuel Maine, without whose aid and friendship my loss and injury would have been greatly increased) as clear and regular a statement of my affairs as was possible, so as to enable him to dispose of the remaining goods and mer-

\* No. XVII. in Appendix.

chandize, to collect and settle debts, &c. and bring my business to a conclusion. During the few days preceding my departure, no guard was permitted to go on shore with me, nor was it considered prudent for me to go to a friend's house, for an hour's stay even, such being the feeling of insecurity and danger.

At the time I was removed to the "Imperieuse," two French servants of the Consul were sent on board her for passage down to Hong-Kong, being on their way to Europe. On the following day, seeing that we were likely to be detained in harbour for an uncertain period, they returned on shore to the Consul's house, and the progress of the disease, in the "Imperieuse," still making rapid way, it was not deemed safe for them to come on board again, and a passage was procured for them to Shanghai, in another of H.M.'s ships. I allude to this fact, to show the cruelty and inhumanity of placing me in the midst of disease, in a vessel in which the personal safety and health of the Consul's two servants were considered endangered.

During a passage of ten days to Hong-Kong, out of a crew I believe of about five hundred, more than one hundred and fifty cases of smallpox occurred, several of which were fatal, but Thanks to the mercy of the Almighty, I escaped the disease. On the 21st January we arrived in Hong-Kong harbour, and I was delivered over into the hands of the Hong-Kong police officers, and taken to the criminal gaol.

In taking leave of H.M.S. "Imperieuse," and "Pioneer," I must here record my warm thanks for the many acts of kindness I received from their officers, and whom, as I recall my unfortunate position in those vessels, I shall always hold in grateful remembrance.

On arrival at the gaol, I underwent a short examination, every article of value was taken from me, even to a sleeve link and a pair of gloves, my person was roughly searched by Chinese and Portuguese police servants, and a clean blanket being given me, I was about being locked up in a stone cell in the criminal prison, when some misgivings arose as to the prudence of this step, in consequence of my having just landed from a vessel infected with disease. It was decided, therefore, to lodge me in a room which was somewhat apart from the other portions of the gaol on the debtor's side of the building, and being ordered to give up my clean blanket, for which a piece of a dirty one was substituted, I was locked up there, and my term of imprisonment commenced.

My prison apartment, securely barred, contained a wooden tressle, about six feet by two and a half, and a pail. No food was given me that day, although I had not eaten since the early breakfast of the "Imperieuse." During the passage from which I had got damp and chilled by a drizzling rain, which did not lessen the discomfort and wretchedness of my position. My overcoat, which I had been

permitted to keep, did not afford me sufficient warmth for the night, which at that season of the year is cold and raw ; and although I was unable to sleep in consequence, I could not make use of the filthy piece of blanket provided by the gaol authorities. Early the next morning I was visited by Mr. Scott, the governor of the jail, who told me that I should have to be detained fourteen days in quarantine, after which I should be placed in the criminal prison, and that I should have to live with the other occupants and malefactors there ;—that as the criminal side was very full, it was not improbable I should be locked up with some others, and that even the luxury of a solitary cell would be denied me. This was, indeed, a terrible prospect. Before leaving Japan, Mr. Consul Vyse had told me, that although sentenced to imprisonment in the criminal gaol, I should not be placed with other prisoners, but that a comfortable room would be allotted me, in which I should be allowed the use of my personal effects and clothing.

Whilst under detention in this gentleman's Consulate, I had always received every humane and kind treatment, and notwithstanding the unfortunate circumstances of my position there, I cannot pass over that period without marking my appreciation of his obliging and amiable disposition, which gained as much my grateful regard, as he earned my sincere respect by his untiring exertions and earnestness in forwarding the wants and wishes of

his countrymen, not unopposed, and against many petty obstacles and most annoying difficulties only known to those dealing with the Japanese. The goodwill of the English community of Yokuhama are his, and they would, without exception, I believe, be glad to serve him.

On reaching the Hong-Kong gaol, all my boxes and portmanteaux, which had accompanied me from the "Imperieuse," had been detained by the authorities. I requested Mr. Scott to allow one of them to be brought me, or at least a change of linen and necessaries for washing. This however, being contrary to the prison rules, was refused; though a pail of water was given me, and for two days and a half I was compelled to remain in an unwashed, damp, and wretched state. A pound loaf of bread, and a tin of sweetened tea-water were given me for breakfast, and some potatoes and a tin containing a few pieces of fat meat swimming in grease for dinner. This meal however I could not swallow, and I lived on the small loaf of bread and the potatoes. On the third day the stringency of the rules was somewhat relaxed, and my desk and a portmanteau containing clothes, linen, and toilet necessaries were brought me. Never shall I forget the energy with which I commenced the work of soap and water, or my feeling of comfort and relief at its conclusion. On the fifth day I was informed by Mr. Scott, that my friends had retained legal aid to procure my release, and that it appeared not

improbable, that the warrant by which I was imprisoned might be shown to be faulty, and my discharge be ordered. Seeing that my case was a peculiar one, and my detention likely to prove illegal, the Governor of the gaol, from this period relaxed the severity of the prison regulations in my favour, and I was provided with good and ample food. On the 28th January, having undergone one week's imprisonment, I was brought before the Judge of the Supreme Court, and it having been argued to his satisfaction, that the warrant the Governor of the gaol held, was faulty and informal, he ordered my immediate discharge.

I was now free to adopt any course to punish my injurers, to recover my ruined position and pecuniary losses, and to seek compensation for the unmerited pain, penalties, and imprisonments I had borne. In the Order-in-Council, under which I had been sentenced, provision had been made for actions at law, whose cause arose in Japan, and the trial of which suits could be brought in the Supreme Court of Hong-Kong. I could therefore bring without delay, and on the spot, an action at law against the Minister, who had so unjustly and illegally punished me, or there was another course open to me for adoption. I might return to England, and relying on the sense of honour and justice of the ministerial officers of Her Majesty's Government, might place before them the whole particulars and oppressive tyranny of my case, and appeal to them

to recompense me for my losses, and compensate me for the injuries that had been inflicted on me. The more regular and easy course being the one pointed out by H.M.'s Order-in-Council, was after serious consideration determined on by me, and having placed myself in the hands of a member of the Hong-Kong Bar, a suit against Mr. Rutherford Alcock, Her Majesty's Consul-General in Japan, was forthwith commenced, and I laid my damages at the sum of \$30,000 (thirty thousand dollars). At the same time I forwarded to my friends in England full details and copies of the whole particulars and proceedings in Japan, and of my discharge from the Hong-Kong gaol.

Shortly afterwards I received a letter\* from various friends and residents in Yokuhama, expressing their sympathy for my unfortunate position, and in their review of the circumstances attending my seizure, and the Consular trial, I had the satisfaction to read, that they attached full credit to the truth and straightforwardness of my statements, and that Japanese shopkeepers, who had been eye-witnesses of the attack made on me, had since declared, that the gun was already torn from me and was in the hands of my assailants when it exploded and wounded the injured man. In conclusion, as a mark of the sympathy of the European community with me, they had subscribed and handed me \$1000 (one thousand dollars), the amount of the fine imposed on me by the verdict of the Consul-General.

\* No. XVIII. in Appendix.

This letter reviews Mr. Alcock's verdict, and with a clear argument exhausts the whole subject of the charges that were brought against me.

(Copy)

*“Yokuhama, 25th January, 1861.*

“DEAR SIR,

“We the undersigned residents at Yokuhama, feel it our duty to express to you in writing (what, however, you are already well aware of), our strong sympathy with the unfortunate position in which you have been so unjustly placed.

“We use the word unjustly advisedly, in the full conviction of your innocence of the charges which were brought against you, at the same time we are far from imputing to H.B.M. Consul and Minister, an intentional injustice, or that they gave a verdict contrary to their conviction of what was really the case.

“We feel ourselves bound, therefore, to state the grounds on which we impugn the correctness of their judgment.

“You were accused in the first place of having violated the Laws of Japan, in going out shooting. The fact was not denied; nay, was admitted by yourself in your defence; it remains therefore only to consider whether this could be made out to be an offence at all, and therefore punishable.

“It was not proved to the satisfaction of the three Assessors, who were summoned to assist the Consul in this case, that such a Law exists at all. On the contrary, the evidence strongly impressed them with the idea that no such enactment has till very recently ever been heard of, even by those officers most cognizant of the Laws.

“Some traditionary rule there certainly appears to be, as to shooting—that is, there are some re-



strictions as to distance from Yedo, but even on this point the Officers did not agree.

"Supposing, however, such a Law to be in force in Japan, can it for a moment be supposed that any of their arbitrary enactments are binding on Foreigners, and the infraction of them punishable, without the slightest notice being given to them by the native authorities of their existence, and by the Foreign Officials for the necessity for their observance?

"How does the law stand on this point?—In the Queen's Order in Council of the 23d January, 1860, it is distinctly laid down, that no act done by a British subject in Japan, provided it be not against the Treaty stipulations as to Trade, can be taken to be a crime, misdemeanor, or offence, which if done in England would not be punishable by Law. But the power is given to H.M.'s Consuls, with the approval of the Envoy Extraordinary, to make rules for guidance of H.M.'s subjects in Japan, and the peace and good order of the settlement.

"Was the act of which you have been convicted, first, one which in England would be punishable by Law; or Secondly, was it against Consular Notifications, issued and made binding according to the terms of H.M.'s Order-in-Council?

"With regard to the Law of England, H.M.'s Envoy has certainly stated in his judgment, that the act of shooting (which it was proved that you committed) *was* punishable in England, under a certain Act of Parliament, which he specifies. We are unable to refer to this Act at present, and must therefore only attribute to our ignorance, the fact that the existence of such a law is generally doubted here. If such there be, it must have been one of those recent enactments, which our absence in the East, (and general indifference as to shooting at home) has caused us to overlook. We have, many

of us, been formerly in the habit of shooting in England, and though well aware that in that country the unlicensed killing of *game* is, for very peculiar reasons forbidden, we had never till now heard it propounded that the killing of a wild goose on common land was a legal misdemeanor.

"But his Excellency also declares trespassing is against the Law of England. Now it is to be remarked that this word trespassing is heard for the first time during the case, from H.M.'s Plenipotentiary; who, thinking, perhaps, to strengthen his judgment, invents a charge against you, never dreamed of by the Japanese, and never brought forward, much less proved at the trial. He is, or ought to be well aware, that in shooting you were not a trespasser, certainly not necessarily so, and that our daily walks, take us over precisely the same ground, as that you and others formerly shot over, which is uncultivated and wooded country, with public paths in all directions.

"With regard to the Second Question, it is indeed alleged that shooting was forbidden by the British authorities, that Consular Notifications prohibiting the sport had been published, and that those engaging in it acted in defiance of such rules, and committed thereby a deliberate violation of the Law.

"Let us consider how the case really stands, and whether the Foreign or Native Officials had given cause to understand that shooting was illegal.

"A certain circular bearing your signature as having seen it was produced in Court, to carry out this assertion. What, however, did this circular amount to? To a request to the few English then resident here, to desist from shooting for a time while the question was in abeyance. The Notification or request was never published, was never affixed in the Consular Office, as desired in H.M.'s

Order in Council; and could therefore in no way aspire to be considered as a rule carrying with it punishment, as a consequence of its infraction.

"But, independently of this, we maintain, that you and every one here, had a right to assume from the conduct of our Officials, that the question could no longer be in abeyance.

"It has been asserted that your arrest was in consequence of the difficulty of identifying offenders, and after reiterated complaints had been made to the Consul, without his being able to trace the delinquents. We are well aware, on the contrary, that *the name and residence of every person, who went out to shoot, were not only perfectly well known to the Japanese Officers, but that there were cases where such persons were reported by name to the Consul, and no word of disapproval, no sentence of warning even was ever called forth.*

"Why, if this sport were so obviously illegal, were these reiterated complaints disregarded? and why were the persons, who were very well known to the Consul, not at least cautioned?

"*It is a significant fact also, that this deliberate violation of the law, as it is now called, was constantly committed by Consular Officials, with the Consul's full knowledge and concurrence, and that the Secretary of the British Legation came down from Yedo, on the very day you were taken, with the intention of shooting over this country, and that with the knowledge and approval of H.M.'s Envoy Extraordinary.*

"It must also be remembered that numbers of this community were in the habit daily of shooting; and that no remonstrance was made to them by the Japanese Officers; and that some have been out for days, with Officers and Interpreters sent to watch them, who, far from endeavouring to put an end to

their sport, treated them with attention and civility, and, in some cases, even provided them with quarters for the night. Yet they never complained of the shooting, and though the names of the sportsmen were well known to the Japanese accompanying them, the subject was never afterwards mentioned.

“ For these reasons we say, then, that you, and all the British residents here, had a right to assume, as they did, that the question was no longer in abeyance,—that no objection was raised by the Japanese, or, if any, the Foreign Officials considered it unworthy of notice.

“ With regard to the first count, then, we conceive that it was not proved that any Law against shooting exists in Japan, and, if it exist, no sufficient measures had been taken, either by the Japanese or British authorities, to render it legally binding.

“ As to the Law of England, it can hardly be pretended that there is any enactment against shooting altogether, or that killing a wild goose in common open country is a punishable offence.

“ If this first count fall to the ground, the Second, namely, assaulting and resisting Officers in the execution of their duty, cannot for a moment be sustained. In fact, it converts the attempt to arrest you into an unprovoked and lawless attack, and one against which it was your right to defend yourself by every means in your power.

“ With reference to the Third charge, that of maliciously wounding an Officer of the Tycoon, it is evident that, if the arrest were unlawful, you were justified in going any length in warding off the illegal assault of a body of armed ruffians, who attacked you in the public streets of Kanagawa; and if even had a shot from your hands killed or

wounded one or more of your assailants, it could only be termed a perfectly justifiable act of self-defence.

“ But we wish to record our solemn and decided conviction, founded on the evidence adduced at your trial, that the shot was fired, not by you, but through the ignorance and carelessness of one of the Japanese Officers. The evidence on this point was, as every one of the hearers, except the Consul, was fully persuaded, most unsatisfactory, prevaricating, and contradictory. The principal witness against you, the Officer who commanded the party who attacked you, was himself publicly reprimanded in the open Court by the Consul for his repeated prevarications, and was informed that his conduct might probably form the subject of an enquiry at Yedo; and the whole of the testimony against you was of a character to convince the Assessors, and the whole of the hearers, of your complete innocence. But H. M.’s Envoy declares in his judgment, that your own statement was of itself sufficient to convict you; he therefore accepts a portion of your sworn declaration as important evidence, but rejects as false all the exculpatory part, admitting only the passages tending to incriminate you. This we cannot but conceive to be unjust; and we wish to express our own firm belief in the straightforwardness and truth of your statement.

“ We are convinced from circumstances which had previously taken place, and the feelings shared in by the whole community, which cannot perhaps be entered into by persons distant from hence, and which may even be considered mistaken and reprehensible, that had you in your own defence shot the man you would not have concealed the fact; and would have considered that you were justified in so doing.

“ However erroneous this feeling may be, the

knowledge of its existence strengthens and confirms us in our belief of the entire truth of your account of the transaction.

"The only important circumstance, bearing on the case we have to mention apart from the evidence, is, that *persons here well acquainted with the Japanese language, have been informed by the Japanese shop-keepers, eye-witnesses of the occurrence, that the gun was in the hands of a Japanese Officer when it went off.*

"Most unfortunately such is the despotism of this country, that no means could induce the persons to come forward to give evidence against their Officials, and even when again questioned they are afraid to repeat the truth.

"Taking all these circumstances into consideration, we can come to no other conclusion than that arrived at by the three Assessors, who were called on to assist the Consul, who, after a careful and dispassionate hearing and examination of the evidence adduced, declared their conviction of your innocence.

"Had they formed part of a Jury sworn to try the cause, they would, as would all the hearers of the case, have acquitted you. Unfortunately the verdict of the Consul, supported by H. M.'s Envoy, has overruled all their protests; but we still repeat that we strongly concur in their dissent.

"In conclusion, as perhaps the greatest mark we can give of our sympathy with you in your misfortune—certainly the strongest proof of our firm belief in your innocence, we have great pleasure in handing you the sum of One thousand Dollars (\$1000) the amount of the fine in this case, which has been most willingly subscribed by the Community here.

"We only regret we are unable to cancel or shorten the term of your imprisonment, which we feel is the hardest portion of your punishment, and

which H. M.'s Envoy felt himself called on to add to the original sentence of the Consul.

"But as far as the community resident here is concerned, we assure you, we consider that you will go forth with no stain on your character, and we sincerely trust, that when the whole facts of the case be made known to the public, they also will arrive at the like conclusion.

"With every good wish for your future welfare,

"We remain, dear Sir,

"Your obedient servants,

(Signed)

"JOHN B. ROSS.

A. J. MACPHERSON.

SAML. MAINE.

H. HOOPER.

W. G. ASPINALL.

FREDK. H. BELL.

HENRY BUSH.

J. S. BARBER.

THOMAS HOWELL.

J. BIRDSEYE.

THOS. BAKER.

THOS. ESKRIGGE.

THOS. MURRAY HOLME.

HENRY WILLGOSS.

P. R. HALL.

S. ROBERTSON.

"LOUIS BOURRET.

JNO. ALLMAND, JUN.

EDWARD CLARKE.

THOS. TATHAM.

D. B. SIMMONS.

W. KESWICK.

KNIGHT AND HECO.

D. C. BROWER.

C. T. ELMSTONE.

JOHN O. P. STEARNS.

E. S. BENSON.

JOHN H. DUUS.

C. H. RICHARDS.

E. M. VAN REED.

FRANCIS E. BOYD.

F. GARNIER."

Shortly after the suit in the Supreme Court was commenced, the Consul-General visited Hong-Kong and retained counsel to defend him. During the summer of 1861, I received information from home, that the various particulars and detailed copies which, in the earlier part of the year, I had sent to England, had been submitted to the consideration of Her Majesty's Government, and that questions had been put to the Foreign Secretary in the House of Commons, respecting the treatment of my

case. Shortly afterwards I heard that instructions were about being forwarded to H.M.'s Representative in Japan, to reverse the whole of his verdict.\* Had I not myself procured my discharge from the Hong-Kong gaol, long before this reversal of my sentence could have arrived, the full term of three months' imprisonment would have expired, and I should have suffered a terrible incarceration with malefactors and prisoners of all races and crimes, in a dangerous and most severe climate. Heartily shall I always congratulate myself on the errors and informalities of a warrant, which offered me an escape from the refined cruelty and torture of such an imprisonment.

In the autumn of 1861, Mr. E. H. Pollard, (the barrister who conducted my action), received in an envelope bearing his name, a letter† addressed to me from Mr. Consul Vyse, officially informing me, at the Minister's order, of the reversal of my verdict;—stating that no impediment existed to my return to Japan, and that the fine of one thousand dollars, would be handed by the Consular Court to whomsoever I might authorize to receive it. In consequence of the strange manner in which the Consul had forwarded this letter to Mr. Pollard, that gentleman, feeling himself aggrieved, did not hand it to me, but addressed to Mr. Consul Vyse, the following letter,‡ which will explain the cause of my not receiving it at that time.

\* No. XXIII. in Appendix.      † No. XIX. in Appendix.

‡ No. XX. in Appendix.



*"Hong-Kong, October 11th, 1861.*

"G. H. VYSE, Esq.

*"H.B.M.'s Consul, Kanagawa.*

"SIR,

"I have received a cover purporting to come from the 'British Consulate, Kanagawa,' and addressed 'Mr. Pollard, Lawyer, Hong-Kong,' which the post-office authorities here have sent to me, as being the only person to whom the address, 'Mr. Pollard, Lawyer,' could refer. I have therefore opened the cover, which contained no letter to any one of the name of Pollard, but another cover addressed 'Michael Moss, Esq.' If this cover was intended to reach my hands, permit me to observe that it would only have been ordinary civility to address me a few lines, stating why a letter to another person is sent to me.

"Perhaps I have no right to expect courtesy from the Consul for Kanagawa, as, for some reason unknown to me, he has never deigned to answer a letter I addressed to him on the 28th February last,\* written by me in my professional capacity, which, for your information, is that of a member of the English Bar.

"As I cannot see why my profession should absolve you from the ordinary courtesy due from you, if only in your official character, I shall retain the letter addressed 'Michael Moss, Esquire,' until I hear from you the reason why it is forwarded to me in a blank envelope, and what you may wish to have done with it.

"I have the honour to be, Sir,

"Your obedient servant,

"EDWARD H. POLLARD."

\* Enclosing the notice of action in *re Moss v. Alcock*, to be served on the Consul-General.

On the trial of the action at the end of December, the Consul's letter to me was produced and handed me:—The fact of the reversal of the verdict having been long before then known by public reports in the newspapers. \*

Being now in possession of the Official Notification from the authorities in Japan, immediately after the trial was concluded, I acknowledged\* its receipt to the Consul, referring him to the above letter sent him by Mr. Pollard, to explain the cause of my not having done so earlier; at the same time I requested him to hand the fine of One thousand dollars to Mr. S. Maine,† of Yokuhama, to whom I also sent an authority‡ to receive it from the Consul, and whom I instructed to return it with my warm and grateful acknowledgments to those friends and gentlemen of Yokuhama, who, to mark their sympathy with me, had so kindly subscribed it.

It will be remembered that the Consul-General in his verdict, awarded this fine to be handed over to the wounded Japanese, OyerkUNETARO. I cannot say whether such had been done, or if it had been, I am ignorant of the measures that were adopted to regain possession of the money back from the Japanese. This portion of my case, I must acknowledge, is to me involved in mystery, and must have been attended with some complications and difficulty.

\* No. XXI. in Appendix.

† The representative in Yokuhama, of Messrs. Fletcher & Co. of China.

‡ No. XXII. in Appendix.

Lengthened periods and protracted time had been granted to Mr. Alcock's counsel to enter his Pleas for the defence of the suit, and I had made affidavit against the hardship and injury of these delays, praying for a speedy hearing. It was not until the end of December, however, after a year had been consumed, that the action was brought to trial. The Judge of the Supreme Court then decided, that so much of the injuries, alleged to have been sustained in Japan, could not be adjudicated upon before himself, as by the Order-in-Council, which provided for the bringing of civil suits from Japan into his Court, his jurisdiction was concurrent with the Consul-General in Japan — the defendant in the present case. But the Consul-General having put himself beyond the protection thus afforded him by the Order-in-Council, by having added to his verdict an unlawful imprisonment, the Chief Justice proceeded to try that portion of the case, to which he confined the attention of the Jury. His Lordship left it to them to say, whether the mistake of the Minister's reading of the Order-in-Council, was such as a reasonable man, in his position, might have been supposed to make; and to decide what compensation was due to me for the false imprisonment in the Hong-Kong gaol. The Jury considered the mistake was an unreasonable one, and awarded the sum of \$2000, (two thousand dollars) for compensation (for the false imprisonment), and decided that the costs of the action should be borne by the defendant. No evi-

dence was adduced as to the events which attended my conviction in Japan, nor the damage sustained thereby, nor would the Judge permit me to go into any details, or a statement of my losses, to explain in what my claim for \$30,000—(thirty thousand dollars) consisted. The only knowledge the Jury had on the merits of my case, had been afforded them by the few, imperfect, and disconnected particulars, which, since the report of my seizure by the Japanese, had from time to time appeared in the public newspapers of the Colony. In answer to an inquiry by the Court, the Jury said that the injuries sustained by me in Japan, would have justified in their opinion an additional award of from \$15,000 to \$20,000 (fifteen to twenty thousand dollars).

Having heard no evidence, and without any data of the facts, or of my losses, unacquainted with the true outline of my case, or with the particulars and peculiar features of my conviction in Japan, this opinion, and fancy award as I may term it, was as vague, unfounded, and unjustifiable, as the question of the Judge was unfit and unaccountable. In placing, however, this question to the Jury, the Judge stated that it was for his own private information and satisfaction, and would in no way influence the case, or affect any steps, that might at a future period be adopted.

Such was the unsatisfactory result of the trial in the Supreme Court of Hong-Kong, which not only left my commercial damage unrepaired, and the injustice and hardship of my case unexposed and un-

tried, but which considerably increased, by a year's detention in an expensive colony, my already very large monetary loss, and had seriously delayed me in recommencing to establish myself in business.

Law, proverbially costly, is of still greater price abroad, especially so in Hong-Kong, China. Although the costs of the action had been adjudged to the defendant, only a certain portion of them, as taxed by the Registrar of the Court, would be paid by that party. I had been at an outlay of \$425 (four hundred and twenty-five dollars) in procuring my discharge from the Hong-Kong gaol, and had advanced \$500, (five hundred dollars) to my Counsel during the progress of the suit, which with further legal charges still remaining against me, even with the award of \$2000 (two thousand dollars), uncontested and paid by the defendant, would still leave me with a considerable loss and money out of pocket. Not only, therefore, had I been delayed a year, the value of which time was most important to me, but from these few details, it will be seen, that by following the course pointed out by Her Majesty's Order-in-Council, my pecuniary and commercial damage was aggravated. By referring to that Order, it will be seen that its spirit and intention on this point is evident; but by a faulty wording and careless construction its provision is neutralized, and its object destroyed :—thus it overthrew the jurisdiction of the Supreme Court, and barred the trial of the real merits of my cause. The object of my suit in

Hong-Kong was to recover the damage occasioned me by deportation from Japan, and the scene of my business, and not to seek for compensation only for a week's imprisonment, which, though putting me to personal discomfort, and with the prospect of a worse incarceration in the Criminal Gaol, to great distress and anxiety of mind, did not leave me with any other or material injury. Acting on legal advice and the opinion of my friends, I now determined to return without delay to England, for the purpose of pointing out the bad legislation of the Order-in-Council to Her Majesty's Government, and submitting the injustice and claims of my case on them, in the hope of their acknowledging its honest nature and merits, and placing me in a not worse position, than I was confident I should have been in, had the Supreme Court had jurisdiction.

Without loss of time I left Hong-Kong by the mail steamer for England, where I arrived in March, 1862, and on the 31st inst. I placed the object of my return before H. M.'s Secretary for Foreign Affairs.\* Being informed that Mr. Layard, the Foreign Under Secretary, would allow me a personal interview, at which I might state the whole of the particulars of my case, I wrote him,† on the 2d of April, requesting to know when it might be convenient to him to see me. Mr. Layard, in reply, declined giving me a hearing so long as any proceedings at law were pending.

\* No. XXIV. in Appendix. † No. XXV. in Appendix.

Several objections reserved at the trial in the Supreme Court of Hong-Kong, were as yet not disposed of, and I was not aware what steps were being pursued, arising out of the action by Mr. Alcock, or whether an appeal would be commenced by him.

On the 10th April Mr. Hammond wrote\* me that Earl Russell had received my memorial of the 31st ult. and that he could not enter into any point connected with it whilst the case was still before the Courts. This memorial of the 31st March, referred only to the damage I had suffered by the illegal and unjust verdict in the Consular Court at Kana-gawa, and the non-jurisdiction of the Hong-Kong Supreme Court to adjudicate on that injury. It will be remembered that immediately after my rescue from the hands of the Japanese, in a letter† addressed to the Consul, I made a claim against their Government for the outrage and assault committed on me, for the cruel and barbarous treatment I had met with at their hands, and for the terrible anxiety and distress of mind I had been caused by their violation of distinct provisions and specifications of the Treaty. This claim H. M.'s Representative refused to entertain for me, or to urge, on my behalf, on the consideration of the Japanese Government. Subsequent events had prevented my renewing it, but as they had been beyond my control, and had in no way weakened or altered the grounds on which my claim was based, I resolved

\* No. XXVI. in Appendix.    † No. III. in Appendix.

to submit it through Her Majesty's Government; and as the Japanese Ambassadors were now about visiting this country, I deemed the time appropriate and opportune for so doing, and as the claim was a question between the two Governments of England and Japan, I concluded I should address myself to Her Majesty's First Minister of State.

To Lord Palmerston, therefore, on the 1st May, I submitted my claim, in a letter,\* explaining the grounds on which I maintained it, and requesting his Lordship, as the Envoys of the Tycoon of Japan were about visiting this country, to urge it through them on the attention and consideration of their Government.

On the 6th instant I was informed† that Lord Palmerston had forwarded the above letter to the Foreign Office, and I was then told by the honourable Member for Greenwich, that I ought in the first place to have addressed my communication and claim to the Secretary for Foreign Affairs, to whom my conduct was most discourteous and rude. I therefore wrote the following in explanation and apology.‡

"6, Langbourn Chambers,  
Fenchurch Street, May 22nd, 1862.

"MY LORD,

"Sometime ago I addressed to Lord Viscount Palmerston the letter, a copy of which accompanies this.

"It relates to a claim which I believe myself to

\* No. XXVIII. in Appendix. † No. XXIX. in Appendix.

‡ No. XXXI. in Appendix.



have against the Government of Japan, quite distinct from the appeal which I have already ventured to lay before your Lordship, as to the proceedings of Mr. Alcock, Her Majesty's Representative in that country, and I was under the impression that such a subject could only with propriety be submitted to the Premier.

"I am now informed that my impression was erroneous, and that in addressing myself to Lord Palmerston, I not only departed from the usual forms, but that the step I had taken might even be construed into an act of personal discourtesy to your Lordship.

"I therefore hasten to say that I beg you will believe that nothing could be more foreign to my intention than even the semblance of disrespect to your Lordship, and I trust that you will accept my apology for the irregularity of which I appear to have been guilty, arising from my total ignorance of official forms and my great anxiety that I may not hereafter have to reproach myself with having neglected any legitimate means of urging claims, which to me are of such vital importance.

"May I further take the liberty to request your Lordship will inform me whether my communication has been submitted to, or is under your consideration.

"I am, my Lord,

"Your Lordship's

"Most obedient humble servant,

"MICHAEL MOSS."

"The Earl Russell, K.G.  
&c. &c. &c."

On the 17th June I once more requested Mr. Layard to give me a personal interview,\* stating

\* No. XXXIII. in Appendix.

that as far as I was myself concerned there were no legal proceedings pending, and as regarded the Consul-General's action in the suit, Mr. Rutherford Alcock having returned and been in England some three weeks, no doubt he (Mr. Layard) had been made acquainted with it. I placed the extreme difficulty of my position before Mr. Layard, and the ruinous damage which delay was causing me. On the same date I addressed\* the Foreign Secretary himself, who since Mr. Alcock's return had doubtless been enabled to arrive at a conclusion, and had determined the merits of my case, to which I begged to recall his Lordship's attention, and to learn if any decision had been arrived at on it. In conclusion I pointed out the damage which the protracted delay, day by day, increased, and which added bitterly to its hardship. Mr. Layard still declined seeing me.† Receiving no reply from the Earl Russell, after a month had passed, I again wrote on the 17th July, recalling his Lordship's attention and craving an answer to my letter of the 17th June:—and I was then informed‡ that my claim to which those letters related had been laid before the Law Officers of the Crown.

About this time I heard that the impression at the Foreign Office with regard to my seizure in Japan, was that I had shot at and wounded the injured Japanese Official "Oyerkunetaro." To re-

\* No. XXXIV. in Appendix.    † No. XXXV. in Appendix.

‡ No. XXXVII. in Appendix. "

move this misapprehension I wrote\* to Earl Russell, assuring his Lordship on my word of honour that the gun had been wrested out of my hands, and that I was on the ground and being bound, when it exploded: and I most solemnly declared the entire truth of my previous statements. In reply I was informed† that Earl Russell was glad to receive that statement, to which his Lordship gave full credit.

On the 28th July I received a communication‡ from the Foreign Office, referring to my letter of the 1st May,§ informing me, that her Majesty's Representative in Japan had made a demand on the occasion of my seizure for the punishment of the chief offenders; that that demand had finally been acceded to by the Japanese Government, and that Her Majesty's Government were not prepared at that distance of time, to re-open the question by making a new and further demand for the payment of a pecuniary compensation to me; and that, under these circumstances, Earl Russell did not think it necessary to go into the several matters urged in my letter, or to argue the question whether the Japanese authorities were, or were not, borne out in arresting me. Five months having now passed since I had submitted to Government the hardship and injustice of my position, and had begged them

\* No. XXXIX. in Appendix.

† No. XLII. in Appendix.

‡ No. XL. in Appendix.

§ No. XXVIII. in Appendix.

in my letter of the 31st March to recoup me for the loss and damage inflicted on me, on the 2nd Sept. their reply and ultimatum was received by me in the following communication.\*

" Foreign Office, August 30th, 1862.

" SIR,

" I am directed by Earl Russell to inform you that Her Majesty's Government have considered your letter of the 31st of March, in which you ask for compensation from Her Majesty's Government on account of the illegal proceedings to which you were subjected in Japan.

" Her Majesty's Government having consulted the Law Officers of the Crown, are not prepared to entertain that claim.

" It appears that you availed yourself of your legal remedy against Sir Rutherford Alcock in the ordinary course of Law at Hong-Kong, and that you recovered such damages as the Court there had jurisdiction to give.

" If you have still any further cause of action, not covered by that judgment, the Courts of this Country are open to you.

" I am, Sir,

" Your most obedient humble Servant,  
(Signed.) " A. H. LAYARD.

" M. Moss, Esq.,

" Langbourn Chambers,  
" Fenchurch Street."

The suggestion here conveyed, that the Courts of Law were open to me, might, under other circumstances, have been followed, and as the opinion of the Law Officers of the Crown would appear to

\* No. XLIV. in Appendix.

show, under the Order-in-Council, to which I have so often had occasion to allude, an action, notwithstanding the time that had elapsed, might still have held good, and have been prosecuted. But the very nature of my appeal to the Foreign Secretary must have shown the hardship and oppression of thus thrusting aside my claim, and forcing me to further legal proceedings ;—to a suit, which by the distance of its cause of action from the scene of its trial, would involve large outlay, long delays, and a protracted final adjustment. But the crushing injustice inflicted on me by Sir Rutherford Alcock, had been so complete and direct in its effects, that it had placed it beyond my power to avail myself of any further action, which might still be open to me at Law, and rendered the delay in the settlement of my complaint of most serious and immediate consequence to me. The verdict of the Consul-General in Japan had torn away from me my means of livelihood, and after two years' exertions to recover it, had left me completely ruined and utterly penniless, and had seriously involved others too in loss. Under these distressing circumstances, and in this impoverished condition, where the means of bare existence was to me a difficulty and heartburning, the suggestion that I might recover in the Courts of Law of this Country was an evasion of justice, and fell on me as a mockery, for it was impossible to follow it.

In the hope that the Foreign Secretary might have decided, under an incomplete apprehension of

the full facts and real circumstances of my position, and that on further representations he might be induced to reconsider his ultimatum—I placed once more before the Foreign Office, through Mr. James Stansfeld, the honourable Member for Halifax, the straightened position and utter ruin into which I had been so undeservedly cast, and my inability to proceed any further at Law. The Foreign Office, however, held to its decision as to the treatment of my case, and if I am not mistaken, intimated that the Government would itself undertake the defence of Sir Rutherford Alcock, should I commence any suit against him.

Without the bare means of existence, the costly weapon of Law, thus mockingly held up before me, is beyond my grasp, and it only remains for me to try what can be done to lead the Government to modify its determination,—by publishing a complete history of my unfortunate position ; by seeking for assistance from the Public Journals and the Press ; and by striving to gain the interest and the voice of Members of the House of Commons, to urge the disgraceful injustice and the bitter hardship of my case in Parliament.

I now, therefore, publish the whole details of my case, in the hope and belief that the oppression, the cruelty and tyranny that have pursued and injured me in Japan, and which the action and determination of Her Majesty's Government since seems to

have approved and will defend, may attract public attention and sympathy, and induce the Government to grant me a fair, impartial judgment of the true merits of my case, and a recognition of those claims by which, if I remain unrecompensed for the loss of time, the unjust punishments and cruel distress of mind I have endured, I may at least be restored to a position equal to that which I held previous to my seizure in Japan.

## APPENDIX.

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### No. I.

#### *Statement under oath.*

Early in the afternoon of Monday, Nov. 26th, I left Yokuhama for a day's shooting in the grounds behind Kanagawa. Two Japanese servants accompanied me, one with a portmanteau with change of linen, chow-chow, &c., the other (my betoe) with wrappers and dogs. We took boat from the Yokuhama boat-house, arrived at the Kanagawa Hattobang without any hindrance, and walked into the grounds behind the American Consulate. After beating some covers for pheasant for about two hours, and when some distance inland, I met Mr. Boyle on horse-back accompanied by another gentleman. Mr. Boyle told me he was returning from goose shooting on an extensive plain to which he directed me, and I saw a goose the result of his work across the back of the betoe, who was I believe carrying his gun. This man I afterwards learnt had been seized by the Japanese.

Following the direction pointed out to me by Mr. Boyle, as nearly as I could while continuing my sport, I reached the plain he had mentioned, I should say at about seven o'clock. I walked some distance on this ground until after the moon had risen, and then went to a house, I had seen at the edge of the open, and was refused any accommodation for the night. After unsuccessfully trying several other houses with the same object, I returned to the first one, and after some discussion, its owner agreed to give me a shake down for the consideration of three izaboos. It was then about nine o'clock. The owner of the house asked my name and address, which I did not hesitate to give him, and he then made me as comfortable as he could for the night. After taking supper I threw myself on a mattress, and putting my revolver beside me, I went to sleep.

Very early next morning I was up, and as daylight broke left



the house. One of my servants remained behind in charge of my traps and dogs. The Betoë and a man I had picked up who knew the country, accompanied me. I shot over the adjacent plain until about ten o'clock, when I returned and breakfasted at the house I had lodged at the previous night. After my meal, I sent one servant to Yokuhama with my wrappers and portmantau, in which, not thinking of danger, I packed my revolver. By this servant I sent three letters to friends in Yokuhama, asking them to dine with me at half past six o'clock that day, and stating that I was returning from the place I wrote from, which I learned was called Shenobarar, or by some such name.

I then bent my steps homewards with my betoë and two dogs, and drawing the charge of goose-shot from my gun, substituted those for pheasant. Beating the covers which looked likely on my way, I arrived without having discharged my gun, as nearly as I could judge, about two o'clock at Kanagawa, and the road I followed brought me out behind Mr. Loureiro's temple. I then called at Mr. Boyle's house, but not finding him there, left for the landing place at Kanagawa to take boat for Yokuhama.

About half way between the wooden bridge (by the end of the street leading to the British Consulate) and the Hattobang, I heard men crying out "Matty," "Matty," and looking round I saw a number of two-sworded men running towards me. I walked up to my betoë who was about twenty paces behind me, carrying a goose I had shot and my gun, which I took into my own hands, and bid him follow me. But the Yarkuneen, who had then just come up, placed their hands on his shoulder and made him stop. I stepped back with my gun over my arm, and said, "Narny," wishing to know what they wanted. I saw that nearly a dozen of them were two-sworded, and that they were accompanied by some men holding a short iron weapon. After asking them what they wanted, I noticed one Yarkuneen who appeared their leader give some instructions to his men, and they all approached me evidently with sinister object. I then cocked my gun, pointed it from my hip towards their leader, and tried to make him understand, that if he came near I should fire and he would be killed. I said, "Teppo" was "Ware," that "annatta" would be "Sherampang." They still advanced, and his men spread themselves out towards the left of the street to sur-

round me. I sprang back, keeping my face towards them, and my gun still pointed. They then stopped, and I again asked what they wanted.

There leader then came forward a few paces alone, and I dropped my gun, holding it in my left hand with the stock resting on the road. Pointing to his men, I was about speaking, when some men I had not seen sprung on me from behind, and seized hold of the gun, and at the same moment the body in front made a rush on me, and though I tried to keep the gun, I was at once pulled off from it. The men who sprang on me from behind must have come from out a shop there, as I kept my eyes on the body in front, and none crept round. Immediately I was seized I found myself entangled with ropes. Those who attacked me in front struck at me with a short iron hammer-like weapon, and pulled me down. My struggles took us up to the right of the road, and my feet being pulled away from under me, I fell head foremost on the left side of the face. At the same instant, I heard the report of a gun, only one explosion—when the gun exploded, I must state it was not in my possession. On falling to the ground, I fell towards the right of the street, and the explosion came from behind me, nor did I see any flash, nor how the gun was fired. Four men then seized my legs and arms, and bound them with ropes, first disentangling the cords that were about me. Whilst they were doing this, another had his knee pressing down my back between the shoulders, and twisting my scarf until I was nearly suffocated. I was quite unable to cry out. Having bound my legs, they twisted my arms round behind the back, and roped them across the shoulders so severely that I thought them dislocated. The men then let go my scarf and several blows were given me over the head and body with some blunt instrument. After this one of them jumped on me. They then lifted me up, carried me into a house, and threw me on the ground, after being there a few minutes I was taken into another room, and a Dutch Interpreter of the Yokuhama Custom House, whom I well know, and can at once identify, came into the room, looked at me, and said with some surprise, "Mooson." I told him I had been attacked by the Japanese, and requested him to make the English Consul acquainted with my position, and asked the reason, and object of my capture. He pro-

mitted to inform the Consul, and on my asking him to have the ropes around my left arm loosened, as the pain I suffered nearly made me insensible, he bid some of them to do so. On my arm being unbound, I found it useless, and could not raise it, seeing which they placed a mattress against the wall, and raised me with my back against it, resting the arm on a wooden stand. I was parched with thirst and could hardly speak, my mouth being filled with blood, and I felt the blood also falling over my neck and back. They gave me two or three mouthfulls of water, and had hardly done so, when a Yarkuneen entered the room and seeing me thus tended, ordered my arms to be rebound, which they did with even greater severity than before. The pain was so intense that I asked for water, at which they laughed, and said, "Errushy," then lifting me on their back, I was hurried down to a house close to the beach, and concluded they were going to drown me. I was however carried into a dark passage and put on the ground, they closing the windows almost entirely, so that I only saw a narrow piece in the wall of a house or godown adjacent.

After being here for about an hour or so, they unbound both arms from behind my back, and I found the sudden relief made me almost insensible again. They however immediately tied eight cords round each wrist, and joined the wrists by another rope; the ends of the cords from each leg and wrist were attached to four men who sat, two on each side.

A fifth then tied another rope to that which joined my feet, and passing it over a beam in the roof held the other end. Here they kept me until seven o'clock. In reply to my questions, they said the English Consul not being at Kanagawa, they had sent over to Yokuhama to seek for him, and that they were awaiting his return from the Custom House, where he was arranging the matter with the Governor. The men who held me did not wear swords. They informed me that Messrs. Telge, Tatham, Bush, No. 22, and American No. 26, had been seized or had created some outbreak at Kawasaki the previous night. I was offered bread but refused it. They often brought me water and raised me to drink. They also told me that one of the Yarkuneen had been wounded in the arm by my gun, but that he was a small officer, and that he had acted badly and would get punishment from Yeddo.

At seven I was hoisted on the back of a man, two men walked in front holding the ropes attached to my wrists and stretching my arms straight, another pair came behind with the cords from my feet, which were also straightened so that my position was quite horizontal with my stomach on the back of one of them.— They carried me to another room open to the bay, and set me down, when a heavy chain was padlocked to my left ankle. I was then tied down by hands and feet in a Japanese chair or “cango,” and all their lamps were extinguished, but as the moonlight was clear, it was easy to see all objects. I was then lifted on shoulders of coolies, and the chair being covered with oil paper, was brought to the beach down a landing stage, which ran from the back of the house I was in.

Here they put me into a shallow boat, and it was at once filled with men wearing two swords. The boat was so crowded that many had to get out of it, and pull it over the shallow water. It soon came to a large boat, alongside of which we stopped, and I was again lifted up and thrown like an empty box in this second boat. I could see from my chair in front as the oil paper was torn there.

This second boat was filled with Yarkuneen, not only from the boat which brought me alongside, but from two or three others that came up. After they had arranged my chair and placed themselves round it, so that it could not be distinguished by any ships or foreign boats in harbour, they lifted the anchor. We went along for about a quarter of an hour, in what direction I did not know—we were then hailed by several boats with great secrecy, and anchored for another quarter of an hour, when I was lifted into a small boat alongside with four men in it; and the screen of my chair blowing aside, I saw a Yarkuneen standing beside me with his hand on his sword, and I struggled to rise, but was thrust down and told to be quiet.

The small boat then pushed off, and after a short time the men jumped out and dragged her over shallow water some distance. They then raised me out of the boat and carried me ashore, where a number of Yarkuneen and guards received me. Two men again raised me on their shoulders, and with a strong muster of two-sworded men carried me along a road I did not know, and after many stoppages, where scouts came up and whis-

pered, and after passing through two gates on the way, where a whispered password was given, we arrived in the front of a square high stone walled fortress, with a wide fosse of masonry around it. Two gates were thrown open, and I was carried into a courtyard filled with two-sworded men standing in regular order. There my chair was put down and I struggled to rise. I managed to raise myself on the left leg, resting on the right knee. They then loosed me from the chair, and with four men holding the cords from each limb, and a fifth pushing behind me, they thrust me through a door about two and a half feet square, into a large wooden den. This door they locked, and passed me through a second, which was also locked behind us, a strong guard accompanying me.

Here I found myself in a stone passage about eight feet wide, surrounded by a wooden stockade, and I was at length forced through a third door into a large cage-like room. One side was walled, the other three composed of an open lattice work of strong wooden beams. Here after refusing to answer any of my questions they left me. I tried in vain to procure some fire or hot tea to warm myself with. I had been exposed for many hours without a hat, my dress torn open, in a confined position since the assault—this den therefore was no pleasant place of rest. I tried to produce warmth by walking to and fro, and lying down covered by a mat, but as the place was unprotected from the weather except by a roof, I found all my exertions futile. At short intervals I had visits paid me from my jailors, who called to me through the bars and wished each time to hear my voice, ere they seemed satisfied I was still in their possession.

After what appeared to me many hours, a number of men and jailors entered my cell with a Japanese doctor, who cut the hair away from the wounds in my head, and after bathing them with saki and water, put some lint and a plaster over them. They then felt my limbs and body to see what order I was in, and washed my right eye and plastered the left side of my face.

I asked one of the men if they intended killing me or no, but he said "not to-night, to-morrow morning the Yarkuneen would see me and talk." In this suspense they left me, after first returning my hat.

A half hour after this I heard the voice of Captain Vyse, and

was released by that gentleman ; it was then half past two o'clock in the morning of Wednesday.

MICHAEL MOSS.

English Consulate,

Thursday, 28th November, 1860.

I, the undersigned, do hereby declare that this statement is true—

MICHAEL MOSS.

Kanagawa, 30th November, 1860.

Declared and signed before me at H.M.'s Consulate at Kanagawa, this thirtieth day of November 1860.

(Signed) F. HOWARD VYSE,  
(Consular Seal.) H. B. M.'s Acting Consul at Kanagawa.

## No. II.

### *Depositions of the wounded man Oyarkunetaro.*

Q. 1. What is your name, are you a government officer?—I am a government officer my name is Oyarkunetaro.

Q. 2. Do you remember anything that occurred on the 15th day of the Japanese 11 month?—One of the foreigners went with a Japanese subject carrying a goose through the town. I went with Hozokoera and Nagaski to question him, when he aimed at, and hit me in the arm ; I do not know anything of what passed afterwards.

Q. 3. Did you meet him by accident or under orders?—I am too feeble to answer any more questions, can you not ask H. or A. about what you want to know.

Mark

*Note.*—It was requested to put the to this, when an officer called "Shanjeda Horeiro," whispered to the wounded man, head officer of the police, named Jounsh Suzocke, after which the wounded man immediately expressed his wish to say something more.

*Viz.* : I cannot live any more, but Moss is now my enemy, and if I could live I wish to see his head cut off.

*Note 2.*—Seeing that a note was taken of the fact, he was told to be quiet.

*Officers present at the Examination.*

1st. Off. Jounoka Suzocke.  
Aikowa Ihindpro Smitsky.  
Kanacta Kozuro.  
Yot i-sa Suzo.

*Interpreter*, Simoza Tanizabao.

Taken in the presence of

ABEL A. G. GOWER,  
T. BLAKMAN.

F. HOWARD VYSE,  
*H. B. M.'s Consul for Kanagawa.*

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No. III.

*Letter of Claim against the Japanese Government.*

Kanagawa, 30th November, 1860.

SIR,—I do myself the honor to transmit to you a statement of the circumstances under oath, which occurred on the 27th inst. with reference to the serious attack and murderous assault made on me in the public street of Kanagawa by Japanese men wearing two swords, and request you will have the goodness to lay the same before His Excellency Rutherford Alcock, H. B. M.'s Envoy Extraordinary and Minister Plenipotentiary, for His Excellency's perusal and consideration, and also my claims for damages.

I beg to state that the attack was made suddenly and that no official paper or document with any seal or signature attached were shown to me. And I further beg to state that I have not in any way interfered with the law of the Japanese Government, and have strictly observed the rules, regulations, and notifications, and circulars issuing from the English Consular Court here, and have observed the Treaty—that I am quite ignorant of what charges have been laid against me, and submit that I am illegally detained. Assuming that the Japanese men, mentioned in my statement, were acting under the orders of their Government, I claim from the said Government the sum of Thirty thousand Mexican dollars, in the way of damages, for being seized and laid hold of, and with great force and violence cruelly struck, and knocked down, and then kicked and jumped on, and imprisoned,

that in consequence of such treatment I have been in a serious state of illness and health much impaired.

In conclusion, I beg to state that if the Japanese Government have any charge or claim against me I am prepared to give to His Excellency, yourself, or the Japanese Government, any security required for my duly appearing to meet the same when legally called to do so, and to request that His Excellency will bring my claim against the Japanese Government.

I have the honour to be, Sir, your obt. servant,

MICHAEL MOSS.

To Captain F. H. Vyse,  
*H. B. M.'s Consul, Kanagawa,*

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## NO. IV.

### PRELIMINARY INQUIRY.

Present at the Inquiry held at the English Consulate, Kanagawa, in consequence of a Japanese having been shot in an assault committed on Mr. Moss, 27th November, in the streets of Kanagawa.

Kanagawa, English Consulate, 1st December, 1860.

Capt. F. H. Vyse, H. B. M.'s Consul.

Mr. Blekmann, Dutch Interpreter, attached to English Consulate.

Mr. Walsh, Secretary, attached to English Consulate.

Three Japanese High Officers, Hosokurar, Nagarsakar, The Ometzky, and Officer Head of Police.

Ishebashi, Japanese Interpreter.

The proceedings opened by Capt. Vyse requesting the Japanese to state their charge against Mr. Moss.

Japanese Officers. The Governor said Mr. Moss was not to be present.

Capt. Vyse. Mr. Moss is to be tried by the laws of his own country, and will remain.

Japan. Off. Still refused to take any measures with Mr. Moss in the room.

Capt. V. When you lay your charge against Mr. Moss, let all



your witnesses be present to understand what the charge is. They will then be dismissed, and when examined will be brought into the room one at a time. But Mr. Moss is to be present the whole time.

Japan. Off. Still refused to carry on or commence with Mr. Moss present, and adhered to their resolution that he be dismissed.

Capt. V. I must then speak to our Minister, who is in the next room, that if they continue in their determination the case will be dismissed and they will receive no satisfaction at all.

Capt. Vyse then went out and spoke with Mr. Alcock, and on returning said Mr. Moss must be present, that the Officers were misconducting themselves, and that Mr. Alcock would make it a matter for serious representation to the Ministers at Yeddo; that this was not a trial, but an inquiry; that if hereafter Mr. Moss's attendance or presence was necessary he should be produced.

Japan. Off. Will not allow their witnesses or officers to be examined, but will prove Mr. Moss shot a goose.

Capt. V. I will examine all the officers whose names I see attached to this list I hold, and who are your witnesses?

Japan. Off. Mr. Moss must leave the room whilst witnesses are examined.

Capt. V. Mr. Moss will not leave the room.

Japan. Off. If Mr. Moss stops in the room coolies and peasan-  
sants may be examined but not officers.

Capt. V. If you continue like this you will be severely reported at Yeddo.

Japan. Off. Nothing will be done whilst Mr. Moss remains present.

Capt. Vyse here again went to Mr. Alcock, and returning, said: You are obstructing the course of justice, and if you persist in doing so the case must be stopped, and the First High Officer held responsible. Mr. Moss will be held to bail, and it will be strongly represented at Yeddo.

Japan. 1st Off. I have not thrown obstructions in the way, but the Governor (of Yokuhama) said you had made him a promise.

Capt. V. You have put difficulty in the way, and I never promised the Governor Mr. Moss should not be present.

Japan. 1st Off. Still persisted.

Capt. V. No laws but English laws are to be used in an English Consular Court.

Japan. 1st Off. Still held out, and thought Mr. Moss was not to be present.

Capt. V. I don't know what you thought, but Mr. Moss will be tried by English laws.

The Japanese here said Mr. Moss might remain in the room if he were behind a screen, so that they could not see him. Capt. Vyse, however, said they might pretend if they liked not to see him, but Mr. Moss should not leave the chair he was in, but that the witnesses would all of them be called in to hear the charge read, and then each would be examined separately. The Japanese witnesses were then called in and answered to their names.

*Witnesses :*

#### THE CHARGE.

On the 14th of this month (Japanese date, corresponding with the 26th November English), Mr. Moss went out shooting near Seenowarar. Mr. Moss stopped one night at that place. On the morning of the 15th (Japanese date) he shot a goose. Mr. Moss took one peasant named Mattagoro to show him a place where geese were to be found, and gave him eight tempos. Mr. Moss then went through Kanagawa followed by his servant carrying the goose. A policeman saw this and informed the officers of the Hongee. Two officers were sent to question the servant what nation Mr. Moss belonged to. The head officer Hosokurar and Nagarsakar followed them for the same purpose, when Mr. Moss aimed at both with his gun; they went round his back (say behind him) when the two shots were fired, which wounded the officer Oyarkunetaro. The police then took Mr. Moss into custody through necessity, in the struggle Mr. Moss received some blows from Saryesky and Magotaro. The servant carrying the goose, trying to escape, was taken a prisoner by a servant of Hosokurar. Mr. Moss was tied up and handed over to Mariamar Ioesarburo for transmission to prison.

The three high officers then affixed their seals to the English

translation of the above, and the witnesses being dismissed one was called in (Ukarwar).

Capt. V. Is this a witness?

1st Off. Yes.

Capt. V. He is aware of the charge?

Witness. Yes.

Capt. V. What is the nature of the charge brought against the Englishman; was it an attempt to murder, or was the man shot by accident, or during the struggle; or is it witness's opinion that Mr. Moss wished to shoot the man?

Witness. I think that Mr. Moss aimed at him to shoot him; as to Mr. Moss's intentions I do not know. The officer in my opinion was wounded by Mr. Moss, not by misfortune.

Capt. V. Was this voluntary on Mr. Moss's part, or did they give him any cause? Did Mr. Moss shoot the man under excitement?

Witness. I think it was Mr. Moss's will, and not through excitement.

Capt. V. Did they want to arrest him?

Witness. They came only to question Mr. Moss's servant, to know to what nation he belonged, and who he was, when, before the servant could answer, the gun was fired, and for this reason Mr. Moss was taken into custody.

Capt. V. Does this man think Mr. Moss had broken any of the laws of Japan?

Witness. Yes, certainly.

Capt. V. What laws? Does he think so because Mr. Moss had been out shooting game?

Witness. Two laws. First having been out shooting, and then having wounded an officer.

Capt. V. By what authority did they arrest Mr. Moss? had they received any orders to do so?

Witness. Because he fired at an officer, Mr. Hosokurar gave orders to arrest Mr. Moss.

Capt. V. Had he received orders from the Governor or from elsewhere, to arrest people?

Witness. Yes; they have had orders to take prisoner any one going out shooting, from the Governor.

Capt. V. Was Mr. Moss shooting or walking in the streets of Kanagawa when he was arrested?

Witness. In the streets of Kanagawa.

Capt. V. What proof did they give to Mr. Moss that they were government officers, and that they simply wanted to arrest him for the mentioned offence; that the prisoner, in fact, should not think himself attacked and had to defend his life, after witnessing the many treacherous murders which have taken place at this port, and unpunished?

Witness. I told Mr. Moss that I was a government officer. I told Mr. Moss I only came about his shooting.

Capt. V. Did you advance alone, or were there more?

Witness. The other officers came also.

Capt. V. Why did they use violence?

Witness. I do not know; the High Officer knows that.

Capt. V. Who was the head officer present when Mr. Moss was attacked, bound up, and arrested?

Witness. Mr. Hosokurar.

Capt. V. Did you have any reason to suppose that the man arrested was an Englishman, or do you think Mr. Hosokurar knew?

Witness. I did not know.

Capt. V. Why did they take Mr. Moss to their own prison, and not bring him immediately to the English Consul?

Witness. I had no orders. I do not know why.

Capt. V. At what o'clock was Mr. Moss taken to the prison?

Witness. I do not know.

Capt. V. When the gun went off was it in Mr. Moss's hands alone, or had others hold of it?

Witness. The gun was only in the hands of Mr. Moss.

Capt. V. Where was the officer when he was shot? before Mr. Moss, or where was he?

Witness. (Would not reply at first but afterwards said) Before Mr. Moss.

Capt. V. Where were you yourself when the gun went off?

Witness. (Had a quick discussion with the Japanese interpreter and then said) I stood to the right of Mr. Moss.

Capt. V. Was the wounded man the only officer before Mr. Moss?

Witness. I think so.

Capt. V. Were any orders given that the English Consul should not see Mr. Moss?

Witness. I think it was by order of the Governor.

Capt. V. Do you think that if Mr. Moss had shown no resistance, he would have been brought straight to the English Consulate?

Witness. If Mr. Moss had not shot they would not have taken him a prisoner. Yes, he would have been brought to the English Consulate.

Capt. V. Did you see the police officers strike Mr. Moss, and if so with what, and where; was Mr. Moss standing, or down?

Witness. There was such confusion when Mr. Moss was taken that I do not know how or where Mr. Moss was beaten, or with what.

Capt. V. Was Mr. Moss bound with cords?

Witness. Yes, with cords.

End of examination of this witness, who then left the Court.

*Seto Kinsymon, next witness examined.*

Capt. V. Are you aware of the charge against Mr. Moss?

Witness. Yes.

Capt. V. What charge have they against Mr. Moss, and are you of opinion that Mr. Moss wilfully intended to kill the officer, or was it done in the struggle?

Witness. I think it was no accident but with will.

Capt. V. Was it voluntarily done on Mr. Moss's part, or did they give him any provocation, or was it done through excitement?

Witness. I think Mr. Moss wanted to shoot because he aimed first at Hosokurar and Nagarsakar. I arrived after the shots were fired.

Capt. V. What makes you think then that Mr. Moss pointed the gun at the two officers, if you arrived as you say after the gun was fired?

Witness. There were a great many witnesses who told me, and I ran to the spot after I heard shots fired.

Capt. V. Did they want to arrest Mr. Moss?

Witness. Yes they did, when I saw the wounded man.

Capt. V. Do you think Mr. Moss had broken any of the laws of Japan?

Witness. Yes, very much indeed.

Capt. V. What law had Mr. Moss broken ?

Witness. I think because he shot the officer.

Capt. V. By what authority was Mr. Moss arrested, and had they received any orders from the Government to arrest people for shooting ?

Witness. Yes, I have had orders to take Mr. Moss and bring him to the Consul.

Capt. V. Was Mr. Moss shooting or walking in the streets of Kanagawa when he was arrested ?

Witness. Walking in the streets of Kanagawa.

Capt. V. What proof had you that Mr. Moss had been out shooting ?

Witness. I had my proof ; Mr. Moss's servant behind was carrying a goose, and a policeman who saw Mr. Moss shoot the goose reported it to me.

The Inquiry was then (it being four o'clock P.M.) adjourned till Monday morning at 10 o'clock.

#### SECOND DAY'S INQUIRY, Monday, 3rd December.

Capt. V. The Inquiry will, in future, be carried on in what is called an open Court, so that if any one comes they can enter and hear what is going on. (The Japanese interpreter explained this.)

Japan. Off. Very well.

Capt. V. (*to Seto Kinsymon*). Is there any form of oath that you can swear, binding on your conscience ? Do you swear by your sword ; by the hand ; by your head ?

Japanese. Do not understand this question.

Capt. V. A vow. We swear by the Bible. The Bible is a book containing all we consider holy in our religion. It is the word of God, who we believe is the highest Power in the world. Have the Japanese any manner or form of taking an oath, which they believe binding on their conscience ?

Here the Interpreter said they understood our meaning ; that the officers have a certain letter which they put to their statement, and that peasants and coolies put a mark by the nail of the thumb, breaking which they will have to commit Harikari.

Capt. V. Although this is an open Court the witnesses can-

not put their ear to the door as that man (pointing to one through a glass door) there is doing.

Here an officer opened the door and made the man go away. (Kakehang—name of mark attached to the statement of an officer.)

Capt. V. The witness who was examined on Saturday will come and put his mark to the copy of his evidence.

Japanese. Presently he will come. (It is only in case of swearing allegiance to their sovereign that they cut the finger and sign their oath by their blood).

Witness last called yesterday called in for continuation of his examination—Seto Kinsymon.

Capt. V. Do you acknowledge the sacred feeling and obligation to speak the truth and nothing but the truth?

Witness. Of course.

Capt. V. What is your name and office?

Witness. Seto Kinsymon, police officer.

Capt. V. Do you remember the 15th of last month (Japanese date)? Were you present when the officers approached and surrounded Mr. Moss?

Witness. I only heard the shot fired, and then ran up to the spot.

Capt. V. When you saw Mr. Moss did you know his name, or that he was an Englishman, or an European?

Witness. No.

Capt. V. What, could you not see he was an Englishman?

Witness. I only saw that he was a foreigner, but did not know to what nation.

Capt. V. How many officers were there, and were they armed with one or two swords?

Witness. I am not certain. Of one-sworded and two-sworded about ten.

Capt. V. What orders had you?

Witness. I had no orders, but being a police officer was on duty.

Capt. V. Does that mean when there is a row in the streets you run to put an end to it?

Witness. Yes.

Capt. V. Could Mr. Moss be reasonably supposed to know the men sent after him were officers of the Government or no?

Witness. I think Mr. Moss could know they were Government officers.

Capt. V. Was there anything in their number or manner of approach menacing or alarming, so that in the event of his not knowing their office he might reasonably conclude his life was in danger?

Witness. Yes, if they had all come at a time, but there were only two or three went to question him.

Capt. V. Can you mention the names of the one or two officers?

Witness. At the time I did not know, but now I do; they were Ukarwar Ginsymon, the first witness; Ikarwar Sogoro, and another police officer.

Capt. V. Did Mr. Moss fire the shot? was the gun in his hands and under his command, or had he already been seized from behind?

Witness. The gun was in Mr. Moss' hands.

Capt. V. Had he already been seized from behind?

Witness. I was not present.

Capt. V. I caution this witness that hearsay evidence is nothing. If he says he don't know, or he hears, or thinks, it is useless; it is what he saw. And I also caution this gentleman beside me (Hosokurar was making signs to witness).

Witness. I do not know because I was not on the spot. I had seen the gun in Mr. Moss's hands after he had fired it.

Capt. V. Was Mr. Moss bound when witness saw him?

Witness. No, not yet.

Capt. V. Did you see the wounded man?

Witness. Yes, I saw him.

Capt. V. Where was the wounded man?

Witness. Before the small watch-house in the street.

Capt. V. Which side of the street?

Witness. The same side as the watch-house stands.

Capt. V. If the shot was fired in Mr. Moss's hands, was it with aim, and was more than one shot fired?

Witness. I do not know, but he aimed first at Mr. Hosokurar, and I only heard one shot, and don't know if the other barrel was charged.



Capt. V. What makes you believe the gun was pointed at Mr. Hosokurar?

Witness. I was told at the time so, and therefore I went to the spot.

Capt. V. Was there any distinguishing mark borne by you, or the others, to show you were policemen, and what is the distinguishing mark?

Witness. No, no distinguishing mark.

Capt. V. Nor for a Government officer?

Witness. There is none—no distinguishing mark between the officers of Government.

Capt. V. Is there any means of distinguishing a Government officer from a Darmio?

Witness. The Government officers have no marks, but the Darmios have.

Capt. V. What are the marks?

Witness. If you want to know you must ask Mr. Nagarsakar; I do not know, he does.

Capt. V. (to the Interpreter). Please ask what are the marks; I wish to be informed.

Interpreter. There are 260 High Houses in Japan, but it is difficult to describe them. One distinguishing mark when going and returning from Yedo is they wear narrow trousers and a coat with a slit at the back up to the neck, and short sleeves; they also have the right to have a pike carried behind them, with a small flag attached to it with their arms or distinguishing mark upon it. When Darmios pass through Kanagawa they never speak to foreigners. Other Government men not on duty would not speak to or take notice of foreigners going out shooting.

If a Darmio insults a foreigner he is always examined by Government officials at Yedo.

Capt. V. If a Darmio is favourable to foreigners, does he offer his services to assist the Government?

Interp. When there are not sufficient Government officers, they can write to a Darmio, when he will assist them.

Interp. (for Officers). Can we go to lunch; we can't stop all the time?

Capt. V. I can—so must they, or we shall never get through our work. When the Darmio lends his officers, do they wear the

Government dress, or their own Darmio's distinguishing mark?

Japanese. The Darmio's uniform.

Capt. V. (If the officers want their lunch it can be brought to them).

Japanese. We will send for it. (Here some one went to order their lunch).

Capt. V. Are all the officers at Kanagawa Government officers, or are there any Darmio's officers lent to the Government?

Japanese. They are all Government officers at Kanagawa, but at Yokuhama there are Darmio's men who live in the barracks and work the battery. They are here for protection in case of emergency. In Japan each Darmio is appointed to a certain place to take care of it.

Capt. V. Did the witness hear any declaration or question put, when the officers came up to Mr. Moss?

Witness. No, I have not heard anything.

Capt. V. Do you know what the law in Japan is about shooting birds? If so, tell what it is.

Witness. I do not know.

Capt. V. Do you know if there is any law about shooting?

Witness. Ask Mr. Nagarsakar (Mr. Hosokurar told witness this, interrupting witness's answering).

Capt. V. The officers are only doing themselves harm. When the witness came up where was Mr. Moss—in the midst, on the side of the officers, or were they behind him?

Witness. Mr. Moss was at left side of the street.

Capt. V. Where were the officers standing?

Witness. Behind Mr. Moss.

Capt. V. Might not Mr. Moss suppose very reasonably that his life was in danger?

Witness. I do not know what Mr. Moss thought.

Capt. V. How would the witness feel if he saw ten men behind him with revolvers—what would the witness think?

Witness. If I saw ten or twelve men with guns and pistols coming up to attack me I would think there was danger, but the men did not carry guns or pistols.

Capt. V. They had swords?

Witness. Yes.

Capt. V. Where were you when you heard the shots?

Witness. Five or six houses distant.

(When a foreigner goes anywhere, an Ometzky follows and notes down every thing.)

Capt. V. Do you wish the Ometzky to be questioned?

Interpreter. The three officers know what took place, and if the evidence of the witnesses is not sufficient, these three officers will tell what passed.

Capt. V. Was the gun in Mr. Moss' hands, were his arms free, or were any officers holding him?

Witness. When the gun was fired Mr. Moss had it in his hands.

Capt. V. Had any officers hold of Mr. Moss?

Witness. When he had shot, they took him from behind.

Capt. V. Is this officer prepared to swear that the gun was not loaded, one barrel or the other, when they were all scuffling to take the gun out of Mr. Moss' hands?

Witness. I only heard one barrel fired, and I fancy when the gun was taken away from Mr. Moss that the other barrel was loaded.

Capt. V. When you came up did you see any scuffling?

Witness. No, I have not seen any struggle.

Capt. V. Did this officer see Mr. Moss pull the trigger?

Witness. I have not seen the trigger pulled, but I have heard the shot.

Capt. V. Did Mr. Moss take aim? Show the Court how he stood and took aim, and let the gun be produced.

Witness. I cannot show how Mr. Moss took aim, because I was not on the spot—I came up after.

Capt. V. Do you believe Mr. Moss wanted to shoot any one?

Witness. I think Mr. Moss wanted to shoot somebody.

Capt. V. When you came up how was Mr. Moss standing?

Witness. When I arrived on the spot Mr. Moss was already taken.

Capt. V. When the shot was fired was Mr. Moss rushed at by the officers, were blows struck, and was he treated with violence?

Witness. I did not see Mr. Moss taken—he was taken when I arrived on the spot.

Capt. V. Did you see Mr. Moss receive any blows?

Witness. No, I have not.

Capt. V. How was Mr. Moss bound—standing—on the ground, how?

Witness. Lying down.

Capt. V. And the policemen—did they hit him with the small iron weapons?

Witness. I have not seen.

Capt. V. How did you find Mr. Moss, was he on his back, on his side, or lying on his face?

Witness. On his back.

Capt. V. Will the officer look at Mr. Moss's face, and say how the marks came there?

Witness. I do not know how they came.

Capt. V. Do you think Mr. Moss did it himself in the struggle?

Witness. I do not know.

Capt. V. I only put it to your sense, do you think Mr. Moss would have done it to himself?

Witness. I do not know; Mr. Moss may have fallen against a stone and blacked the eye.

Capt. V. How do you account for the cut at the back of the head?

Witness. I really don't know: the wounds were found after Mr. Moss was tied up.

Capt. V. Did Mr. Moss continue to make resistance after he was thrown down?

Witness. Yes.

Capt. V. Was he tied with cords on the spot? Describe carefully how he was tied—both hands? and how he was treated?

(Witness showed Mr. Blekmann how it was done. Mr. Hosokurar showed that Mr. Moss was tripped up from behind by being seized round the upper part of the body, and the feet pulled from under him from behind by a kick; that he fell on his face; a man then kept him down by the throat, with his knee in the small of the back, and that he was then bound, with the arms behind the back). Here an officer complained that I had spoken to the Consul, and was taking constant notes.

Capt. V. They may do the same, and take copies if they like; the whole will be sent up to Yedo. There is nothing that will take place in this Court that they will not know—there are no secrets; this will go to the Gorogio. If the officers don't want

all the witnesses examined, I only would then advise them not to interfere with the witnesses, or more witnesses will have to be examined. Do you think that in this case there was any need to bind the ends tighter than is required to keep persons from moving their arms?

Witness. If they are not tied tightly we are afraid the person would escape.

Capt. V. Do they sometimes tie the cords tighter on one occasion than another?

Witness. That depends upon the size of the ropes, and it depends on the skill of the police officers whether they tie them very strong or not.

Capt. V. It depends on the strength of the ropes and the cleverness of the officers. Was Mr. Moss tied cleverly?

Witness. Yes, very cleverly.

Capt. V. Is it an art that they learn?

Witness. Yes, they are taught—all the officers are taught. They have a great many ways of tying up people—men, women, children, priests, soldiers, officers, all differently.

Capt. V. Were not Mr. Moss's limbs tied stronger than was necessary to disarm him and render him captive?

Witness. Only as usual.

Capt. V. By usual you mean by Japanese mode?

Witness. Yes.

Capt. V. Where was Mr. Moss taken when this was done?

Witness. Into a house near where it happened.

Capt. V. Was it the Tea-house there?

Witness. Yes; nearly opposite to the watch-house.

Capt. V. Did you see me, and know that it had been denied to me to see Mr. Moss?

Witness. Yes, I have seen you, but did not know you had been denied to see Mr. Moss.

Capt. V. Were you not at liberty to have told me that an European had been taken?

Witness. Yes, if you had asked me I might have answered.

Capt. V. Were you not at liberty to answer me?

Witness. I did not answer you because you did not speak to me. I had no orders.

Capt. V. Do you know the Treaty—do you ever read it?

Witness. Yes, I have read the Treaty, but being a policeman I can't say.

Capt. V. Do you know if there were any orders not to give the prisoner up to his own Consul?

Witness. I had no such orders.

Capt. V. Where was Mr. Moss taken afterwards until he was received at the prison—at what time did he leave for the prison?

Witness. (After a long hesitation, and much talk with the interpreter) To the Tobee at 6 o'clock.

This witness then affixed his seal to his evidence, and the Court adjourned for half an hour for tiffin (1½ o'clock P.M.)

The Court re-opened at 2 o'clock.

*Dr. Hepburn sworn.*

Capt. Vyse. Do you recollect anything that happened on the 27th November last?

Dr. Hepburn. I was called to see a person that had been wounded in the Tokaido, and Dr. Simmons, who happened to be dining with me, accompanied me. We went to a little watch-house on the Tokaido, and saw a man wounded in the arm; I examined the wound, and it was stated to have been produced by a gun. The wound was a very bad one, the bones fractured in a great many pieces, and the soft parts around the bones torn and lacerated, so much so that I was at once convinced that nothing could save the arm, but that it must be amputated at once to save his life—at all events from a serious and long illness, consequent on allowing the arm to slough off; but those who had charge of the wounded man were unwilling to have the operation performed without permission of the Governor. So, seeing nothing could be accomplished by remaining, I left.

Capt. V. Is it your opinion that had the man's arm been amputated he would have been saved?

Dr. H. I think the probabilities were all in favour of his getting well in a due space of time, and saving his life, had the arm been amputated.

Capt. V. Have you seen the wounded man since?

Dr. H. Yes, I saw him this morning.

Capt. V. Will you give your opinion as to what you considered the man's state this morning?

Dr. H. I think his chances of eventual recovery are very small, though there is a probability of his surviving the present treatment, and wearing through it under present treatment.

Capt. V. And do you consider if he had had his arm amputated he would have been in so precarious a position as he is?

Dr. H. No; I think there is every probability he would have got well.

To the above Dr. Hepburn placed his signature.

*Dr. Simmons next examined.*

Capt. V. You have heard the questions put to Dr. Hepburn?

Dr. Simmons. Yes, and will give an account of what I saw.

Capt. V. Please do so.

Dr. S. I saw the wounded man in question with Dr. Hepburn, and witnessed the examination of the wound, and give it as my opinion that, considering the position of the injury, and the general condition of the wounded man, that if the arm had been amputated at the time, followed by proper treatment, that he would have had ninety chances out of a hundred of living. Should he die from the result of the injuries, I would also give it as my opinion that it is in consequence of improper treatment, in all probability. I have seen a great many arms amputated, and I saw no reason why in this case the man should not recover, if properly cared for.

To this Dr. Simmons affixed his signature.

*Ikarwar Sogoro next witness examined (this man is deaf).*

Capt. V. Do you acknowledge the obligation to speak the truth, the whole truth, and nothing but the truth?

Witness. Yes.

Capt. V. Is there any form of oath binding on your conscience?

Witness. The same way as the others, by a mark.

Capt. V. Do you thoroughly understand my question?

Witness. I acknowledge the obligation.

Capt. V. What is your name, and what your office?

Witness. Second rank police officer—Ikarwar Sogoro.

Capt. V. Do you remember the 15th of last month, Japanese—were you present when the officers approached and surrounded Mr. Moss?

Witness. Yes, I was present.

Capt. V. Did you know Mr. Moss's name, or if he was an European or an Englishman?

Witness. I did not know Mr. Moss, or that he was English, but I did know he was European.

Capt. V. How many officers were they, and were they armed with one or two swords?

Witness. I do not know how many officers were present; if you ask Mr. Nagarsakar he will answer.

Capt. V. The witness will answer my question, having been present.

Witness. About five officers and four policemen.

Capt. V. Had they all two swords?

Witness. Yes.

Capt. V. What orders had you?

Witness. The only order was to see to what nation Mr. Moss belonged.

Capt. V. And how did you find out?

Witness. I only found that out after he had been taken a prisoner.

Capt. V. Do you know of any orders having been given that Mr. Moss was not to be given up to the English Consul?

Witness. I was only present to take Mr. Moss, and I do not know any thing else; I did it by orders of my officer.

Capt. V. Did you report to Mr. Hosokurar that Mr. Moss was an Englishman?

Witness. I fancied that all the officers and policemen knew Mr. Moss was an Englishman.

Capt. V. Why did you fancy so?

Witness. I heard it from other officers.

Capt. V. Will you swear that you never saw Mr. Moss before that day?

Witness. I never saw him before.

Capt. V. Will you put your seal to that?

Witness. Yes, I will put my seal to that (which he did).

Capt. V. Have you ever been at the Custom House?

Witness. I have never been on duty at the Custom House.

Capt. V. Has he ever been in the examination house at Yokuhama?



Witness. Yes, I have been, but there are so many foreigners that I do not know them by name.

Capt. V. Who do you know?

Witness. I know Dr. Hepburn, and all the Consuls—Dr. Hepburn did something to my ear.

Capt. V. Since you have been a police officer have you ever been employed in arresting a foreigner?

Witness. I was at the prison when they put six sailors into prison.

Capt. V. Could Mr. Moss reasonably suppose that the men sent after him were government men sent to arrest him?

Witness. I can't know Mr. Moss's thoughts, whether they were government officials or no.

Capt. V. Was there anything in their number and mode of approach menacing and alarming, so that not knowing their object he might consider his life in danger?

Witness. If he were attacked by a great many men he would be afraid, but in this case they only came to ask Mr. Moss.

Capt. V. Did Mr. Moss fire the shot?

Witness. Mr. Moss did.

Capt. V. Was the gun in Mr. Moss' hands?

Witness. In the hands of Mr. Moss, and it was only after he had fired he was taken prisoner from behind.

Capt. V. Was it with aim or no—was it in a struggle—was more than one shot fired?

Witness. I think Mr. Moss took aim—one shot.

Capt. V. What became of the other barrel?

Witness. I did not see the other barrel, and do not know.

Capt. V. Have you not seen the gun since it has been taken?

Witness. No, I have not.

Capt. V. Who was the officer that took the gun away from Mr. Moss?

Witness. I do not know.

Capt. V. How did you know there was any one walking along the street with a gun?

Witness. A policeman brought the news.

Capt. V. What was his name?

Witness. Mampay.

Capt. V. Describe what you saw when Mr. Moss shot.

Witness. I saw Mr. Moss aim at and hit the man wounded.

Capt. V. Were you in front or behind Mr. Hosokurar?

Witness. I was beside him.

Capt. V. Where was the wounded officer, in front or behind Hosokurar?

Witness. At the side of Mr. Hosokurar.

Capt. V. How many officers were in front of Mr. Moss? all nine?

Witness. They surrounded him.

Capt. V. What would you have done if you had been surrounded by a lot of armed men, and had not spoken their language?

Witness. I would be afraid if I had been guilty, but if I had not been guilty I would not have been afraid.

Capt. V. What do you think Mr. Moss had been guilty of?

Witness. They have had orders that no one was to go out shooting.

Capt. V. As you know that law, I should like to know clearly what the law really is?

Witness. I do not know any law; but I follow the Governor's orders.

Capt. V. If he were in a strange country, and was ignorant of the laws, what then? In England, if he wore two swords, he would be surrounded, it is against the law; would he draw and defend himself?

Witness. That is quite another case. Mr. Moss would not have been taken for merely carrying a gun.

Capt. V. What; was Mr. Moss shooting when he was taken?

Witness. No; but he had been shooting a goose in another place, and his boy was carrying it, and therefore I did it by order of the Governor.

Capt. V. That is no direct proof Mr. Moss shot it. (I have a pheasant in the next room, and if I choose to carry that would you seize me for it and say I shot it?)

Witness. Mampay, who saw it shot, reported it.

Court adjourned till 10 o'clock next day.

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THIRD DAY'S INQUIRY, *Tuesday, 4th Dec.*

Capt. V. Does this witness recollect what took place yesterday?

Witness. Yes.

Capt. V. Was there any distinguishing mark worn by you? if so, what is it? and how was Mr. Moss to know that you were a Government officer?

Witness. I have no distinguishing mark, but the policemen have.

Capt. V. What are you? You are a policeman?

Witness. I am no policeman, as I said yesterday.

Capt. V. Had the officers their faces or back turned towards Mr. Moss when they arrested him?

Witness. With their faces towards Mr. Moss.

Capt. V. Do not the policemen have their marks on the back?

Witness. Yes, on their back.

Capt. V. How do you make out that Mr. Moss could see the mark?

Witness. They have another mark in front; a red tassel to the small iron stick.

Capt. V. Narrate what you saw and know in respect to what took place in the streets that day.

Witness. Where?

Capt. V. Here, in the streets of Kanagawa.

Witness. I have already, yesterday.

Capt. V. He had narrated nothing.

(The witness declines answering the question.)

Witness. I will answer any question, that has been asked yesterday.

Capt. V. He is not here to reason with me, but to answer any questions I place to him, and I may, if I think proper, ask all the questions over again.

Witness. A policeman went on the 15th to Seenowarar, when he saw Mr. Moss shoot a goose. The man's name is Mampay. The policeman ran to Kanagawa and gave information to the Hangee. Mr. Moss came then through Kanagawa, followed by his servant carrying a goose, when I and other officers were sent to find out to what nation Mr. Moss belonged. Mr. Moss refused to answer them, cocked his gun, and aimed at the head-officer Hosokurar and Nagarsakar. He afterwards fired his gun and hit an officer, for which he was taken prisoner.

Capt. V. Had they not touched Mr. Moss ere he fired the gun?

Witness. No; they had not touched him.

Capt. V. How many officers were in front of Mr. Moss?

Witness. I have already answered yesterday.

Capt. V. You are to answer it again.

Witness. Six officers and four policemen in front of him, and after the shot was fired they spread out and came round him.

Capt. V. How many officers were wounded?

Witness. One officer.

Capt. V. Have you touched the gun?

Witness. No.

Capt. V. Never had it in your hands?

Witness. No.

Capt. V. Who did touch it?

Witness. I think a policeman.

Capt. V. What is the name of the policeman?

Witness. If I see the policeman's face I will know him, the policemen change, and I do not know their names.

Capt. V. I must know the names of the policemen and officers who were there that day?

Witness. I know the name of one policeman.

Capt. V. You have come here to answer all my questions with "I don't know." Your evidence will be thrown out if you do not speak.

Witness. I don't know (and declined to answer this question, and was therefore sent out of Court.)

*Next witness called "Saisky."*

Capt. V. What is your name?

Witness. Saisky.

Capt. V. What is your office?

Witness. The servant of the Ometzky Nagarsakar.

Capt. V. Do you know the meaning of the word truth?

Witness. I will speak the truth.

Capt. V. Have you any form of oath binding on your conscience?

Witness. I do not know anything about swearing. I have no form of swearing. I am the servant of the Ometzky.

Capt. V. How am I to believe you?

Witness. I am only a small servant, and therefore imitate my master the Ometzky.

Capt. V. Well, all the Ometzkys are liars, therefore you are a liar.

Witness. I am a very mean man, and will swear by my nail.  
(A long discussion ensued before witness said this.)

Capt. V. The Ometzky does not tell him what to say.

Interpreter. The Ometzky is not.

Capt. V. I don't say he is doing so now, but I know that was the reason they were late this morning. The Ometzky was telling the man what he should say. I am not without information.

Interpreter. The reason why they all speak the same is that they all speak the truth.

Capt. V. That is to be proved, and it is very wonderful, for it is the first time I have known Japanese officers speak the truth. Let this man reply without any one telling him what to say, naturally of his own accord. Is there any way of his speaking the truth, any oath, or what he will consider binding on him to speak the truth?

Witness. I will swear by the mark of my finger.

Here Hosokurar said to the Interpreter—He hopes Capt. V. will understand that this is the first case tried by English law, and the officers don't know what they are to do, and therefore the men don't know what to do.

Capt. V. And that is the reason why the officers tell them what they are to say.

Interpreter. In Japan it is the custom for master to answer for his servant, and their heads go off if it is found out not true afterwards, and the law in England and Japan is very different. Suppose the English are ten more years here, they will know all about it.

Capt. V. Does this witness know what is the charge against Mr. Moss?

Witness. I know where the place is.

Capt. V. Was it for having gone out shooting, and breaking the laws of Japan?

Witness. I do not know what the charge is against Mr. Moss; my master knows. I am a poor man.

Capt. V. He has already, then, told two lies.

Witness. I know the Government sent a complaint to the Consul.

Capt. V. Was he not in Court when the charge was read—he heard it, and now he says he does not know it.

Witness. I have not heard anything about it.

Capt. V. This witness has already been guilty of perjury. I shall dismiss him, and he will be reported to Mr. Alcock.

Interpreter. The witness was not in the room when the charge was read. He was outside.

Capt. V. These two gentlemen, then, still persist in backing this man up in his untruth. All the witnesses were called in. Is this man's name among the list?

(After some discussion, it seemed uncertain if he had been in the room, therefore the charge was read over to him again, and his examination continued.)

Capt. V. Look at Mr. Moss and say if you know him? Have you ever seen him before?

Witness. No, I have not seen Mr. Moss before, and don't know him.

Capt. V. Does the witness mean to say he has never seen Mr. Moss until to-day?

Witness. I have seen Mr. Moss twice, yesterday and to-day.

Capt. V. When?

Witness. When Mr. Moss came into the room of the Court I was outside.

Capt. V. How did you know it was Mr. Moss?

Witness. When I saw Mr. Moss once I know him another time.

Capt. V. Yesterday, by your evidence, was the first time. How did you then know Mr. Moss?

Witness. I have heard from others it was Mr. Moss.

Capt. V. Yesterday was the first time you had seen him?

Witness. Yes.

Capt. V. You can swear to that?

Witness. Yes, I will swear to that.

(To this witness's evidence the officer his Ometzky Ikarwar Kingero refused to put his signature. The examination, however, continued.)

Capt. V. Do you remember the 15th, last Japanese month?

do you remember when the officers approached and seized Mr. Moss?

Witness. Yes, I have been there, because I followed my master.

Capt. V. Did you know Mr. Moss's name, that he was an European, an Englishman?

Witness. I knew him to be a foreigner, but not if he were English, French, or American.

Capt. V. How many officers were there, and did they wear one or two swords?

Witness. I only know my master, Mr. Hosokurar, but I do not know for the rest.

Capt. V. You were not then present, I suppose?

Witness. I could not count how many were present.

Capt. V. What orders had you?

Witness. I never have any orders, but follow where my master goes.

Capt. V. You follow your master; surely you take orders from your master?

Witness. Yes.

Capt. V. Who told you to strike Mr. Moss?

Witness. I did not strike Mr. Moss, I only took him from behind. I thought my master was shot, and therefore I took Mr. Moss in charge.

Capt. V. The witness disproves the charge himself.

The Interpreter here said—I was struck with the feet, and that was not by blows. There was a long discussion, when Hosokurar said the translation of his charge was not correct, that Mr. Moss was struck by the feet, but not by iron weapons afterwards, that there was such a great excitement that he could not see, but that if a man struggled he might get beaten. On looking at the wound on Mr. Moss's head, he said that it looked as if the iron hammer had struck Mr. Moss, but that he gave orders not to have it done. Capt. V. then wanted to learn the names of all the men that did it. Mr. Hosokurar never gave orders that Mr. Moss was to be beaten. Capt. V. again said, let Mr. Hosokurar put on paper all orders he gave, and the names of the people present, and the witnesses. Will Mr. Hosokurar swear that these men, whose names are attached to the list at foot of his charge, were

present, to whom he gave his orders? Mr. Hosokurar swore this. Capt. V. wished Mr. Hosokurar to put his stamp to this, which was done.

Capt. V. How is it the servant, not having done what he was ordered, is unpunished? and does Mr. Hosokurar deny this charge?

Mr. Hosok. No.

Capt. V. Do you pretend not to know the difference between a kick and when a man's head is cut open?

Mr. Hosok. Yes, I do.

(Mr. Hosokurar has said he did not know the men present, and then he said he would swear to the list.)

The Court adjourned for half-an-hour (2.10 P.M.)

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The Court re-met at expiration of the half-hour. (Same witness.)

Capt. V. Where was Mr. Moss taken after he was captured?

Witness. When Mr. Moss was taken I went back with my master, and don't know.

Capt. V. You did not go to the Tobee?

Witness. No.

Capt. V. Nor was not in any house with Mr. Moss?

Witness. No.

Capt. V. Was Mr. Moss tied with cords on the spot, and how was he tied?

Witness. When Mr. Moss was tied up I was not present.

Capt. V. Did not tie him up in the streets?

Witness. I do not know, I went away with my master.

Capt. V. Where did your master go?

Witness. To his home.

Capt. V. Not to the Hougee?

Witness. No.

Capt. V. Did Mr. Moss take aim with the gun?

Witness. Yes, Mr. Moss said the officer was Backar, (a fool) and aimed with the gun.

Capt. V. Was the gun in Mr. Moss's hands, were his arms free, or had anybody hold of him?

Witness. When Mr. Moss shot, no one had hold of him.

Capt. V. Show how Mr. Moss aimed the gun.

Witness. (Showed *truly*) how he aimed, and then said,) Mr. Moss jumped back.



Capt. V. Why did Mr. Moss jump back?

Witness. Because a great many people came before him.

Capt. V. Was there anything menacing in their number and manner of approach to cause Mr. Moss to believe his life was in danger?

Witness. If Mr. Moss was guilty he would be afraid, if not guilty he would not be afraid if a great many officers approached him.

Capt. V. What do you think Mr. Moss was guilty of?

Witness. Because Mr. Moss had been out shooting, and that is not allowed in Japan.

Capt. V. What is the law about shooting?

Witness. I do not know the law, but I know there is a prohibition.

Capt. V. How do you know?

Witness. My father told me when I was a child.

Capt. V. If you saw a number of men coming to surround you, with revolvers in their girdles, how should you act, would you think your life in danger?

Witness. I think that if I were not guilty I should not be afraid.

Capt. V. What do you mean by guilty?

Witness. If I had not offended anybody.

Capt. V. Who first spoke, Mr. Moss or the officers?

Witness. I don't know.

Capt. V. In what direction were the officers walking, from the landing place towards Yedo, or from Yedo towards the landing place?

Witness. From the Yedo side.

Capt. V. When you first saw Mr. Moss?

Witness. I don't know.

Capt. V. Are you blind?

Witness. It is not my service to find out foreigners.

Capt. V. Were you walking with your master?

Witness. Yes, always behind my master.

Capt. V. Where was your master?

Witness. They went from the Hongee.

Capt. V. You never walked on the wooden bridge close by on that day?

Witness. Yes, I had been, when I went home.

Capt. V. They were following Mr. Moss then ?

Witness. At Mr. Moss's back.

Capt. V. Did they call out to Mr. Moss ?

Witness. No, I have not heard.

Capt. V. And did not hear any one else ?

Witness. I do not know.

Capt. V. When the shot was fired, did several officers rush at Mr. Moss ?

Witness. Yes, they all rushed upon him, and I from behind.

Capt. V. Was he struck blows, when down, by whom and how ?

Witness. I do not know.

Capt. V. With what weapons was he hit ?

Witness. I do not know.

Capt. V. Were one or two shots fired ?

Witness. One shot.

Capt. V. Were Mr. Moss's arms free ?

Witness. I do not know. A great many people surrounded Mr. Moss, and I was behind.

Capt. V. What part of Mr. Moss's body did you seize ?

Witness. Round the body, by the arms and by a kick of the leg.

Capt. V. Did Mr. Moss fall on his back or his face ?

Witness. With his face on the ground.

Capt. V. Which side of his face on the ground ?

Witness. I do not know which side, but with his face downward.

Capt. V. By whose orders did you seize Mr. Moss and kick him ?

Witness. I had no orders, but I thought my master was hit,

Capt. V. What made you think your master was hit ?

Witness. Because I saw when Mr. Moss aimed at my master.

Capt. V. Where was your master ?

Witness. Opposite to Mr. Moss.

The Court then adjourned till 10 o'clock Wednesday, and Captain Vyse said that if the officers were not punctual they would be reported at Yedo. The officers said they had a great deal of other business to attend to, and might other officers attend the Court instead.

Captain Vyse said he had no power to permit others to attend, and said they must all come, the same officers.

The next day, December 5th, the officers not arriving, Captain Vyse at about twelve went over to the Yokuhama Custom House to see the Governor, and to say that it would be reported at Yedo. The officers came to the Consulate however at 3.40 in the afternoon, of course there was no Court, and I told them that Captain Vyse was at the Yokuhama Custom House speaking on the matter with the Governor, and that it would be represented at Yedo.

FOURTH DAY'S INQUIRY, *December 6th.*

*Magotaro, next witness called.*

Capt. V. What is your name and office?

Witness. My office is to walk round Kanagawa as a policeman, and see that all is right.

Capt. V. Is there any form of oath binding on your conscience?

Witness. I know. I will speak the truth, and I have a stamp.

Capt. V. You are bound by that stamp to speak the truth, and nothing but the truth?

Witness. Yes.

(Here the Interpreter said the wounded man was better.)

Capt. V. Do you recollect the 15th last Japanese month, and were you present when the officers approached and surrounded Mr. Moss?

Witness. Yes, I was present.

Capt. V. Did you know his name, or that he was an Englishman?

Witness. I knew he was a foreigner, but did not know to what nation he belonged.

Capt. V. How many officers were there, and were they armed with one or two swords?

Witness. I know there were officers present with two swords, but I could not count them, as there was too much confusion.

Capt. V. What orders had you?

Witness. I had no particular orders besides my round, but I saw Mr. Moss aim at my officer and then he shot, and I assisted to apprehend him.

Capt. V. In what way did you help to apprehend him?

Witness. With the gun in Mr. Moss's hand, I tried to get it from behind.

Capt. V. When you first saw Mr. Moss was Mr. Moss alone?

Witness. Yes, alone.

Capt. V. About how many officers would you think there were then, about twelve officers?

Witness. Altogether about fourteen or fifteen.

Capt. V. Was there any distinguishing mark to lead Mr. Moss to know that they were Government officials?

Witness. I do not know that.

Capt. V. If you do not know, you then suppose there was not?

Witness. I am only an inferior man, and don't know what marks the officers wear.

Capt. V. Did you ever know or hear that Mr. Moss had been out shooting that day?

Witness. No, I do not know anything about Mr. Moss having been out shooting, when Mr. Moss fired the shot I ran up.

Capt. V. Did you see Mr. Moss's servant with the goose?

Witness. Yes.

Capt. V. Do you think Mr. Moss picked it up in the streets?

Witness. No, but I do not know where Mr. Moss shot it.

Capt. V. Do you think Mr. Moss could have been carrying the gun for the purpose of going out to shoot game?

Witness. I do not know Mr. Moss's intentions.

Capt. V. Did you not think from Mr. Moss's appearance that he had been out shooting?

Witness. I saw the servant with a goose, and I therefore do think Mr. Moss had been out shooting.

Capt. V. Was there anything in the number and appearance of the officers that might lead Mr. Moss to suppose his life was in danger?

Witness. If Mr. Moss was not guilty he would not be afraid, if even 100 men came after him.

Capt. V. What do you call guilty?

Witness. Because he had shot a goose.

(The Interpreter said he alludes to himself, and does not know what Mr. Moss considered himself guilty of.)

Capt. V. Is there any law in Japan about shooting?

Witness. I know from old times it is not allowed.

Capt. V. If you break a law of Japan is that what you call guilty?

Witness. I can't answer that, you must ask the officers that.

Capt. V. You refuse to answer that?

Witness. I think Mr. Moss had broken that law by going out shooting.

Capt. V. Was the gun alone in Mr. Moss's hand, or had any one else hold of it when it went off?

Witness. In his hands.

Capt. V. If you were to see the gun, could you swear it was the same gun?

Witness. I could not know the exact difference between one gun and another gun.

Capt. V. If the shot was fired in Mr. Moss's hand, was it with aim, and how many shots were fired?

Witness. I think Mr Moss did take aim. Mr. Moss fired once.

Capt. V. Whom did Mr. Moss aim at?

Witness. I do not know.

Capt. V. Do you know the name of the officer that was wounded?

Witness. Oyarkunetaro.

Capt. V. Where were you standing at the time the gun went off?

Witness. On the left.

Capt. V. Behind or in front?

Witness. Behind Mr. Moss.

Capt. V. You say you were near him, you say you took Mr. Moss from behind?

Witness. Yes, behind Mr. Moss, and as soon as I heard the shot I took him.

Capt. V. Were you the small officer in the watch-house?

Witness. I had not the watch, but I saw all this on my round.

Capt. V. Which were the men in the watch-house on that day?

Witness. I don't know.

Capt. V. Is it not your duty to visit the watch-houses on your round, and see that all is in order?

Witness. There was a great deal of confusion, that was the reason I did not ask the name of the men in the watch-house.

Capt. V. Did you not go your round after this had subsided?

Witness. No.

Capt. V. What were you doing?

Witness. I had gone home.

Capt. V. Will you swear you did not go into the house when Mr. Moss was taken?

Witness. No. I had not been in there.

Capt. V. Did you hear any question or declaration put to Mr. Moss, by the officer?

Witness. No.

Capt. V. How did the several officers approach Mr. Moss?

Witness. I have seen an officer approach to question Mr. Moss when he jumped back.

Capt. V. One officer?

Witness. First time two or three.

Capt. V. What did they say?

Witness. I was not near enough to hear.

Capt. V. to Interpreter. Caution the witness, for he is telling untruths. Seeing fourteen or fifteen men armed, might not Mr. Moss suppose his life in danger?

Witness. I do not know. Some people will be afraid when two or three come near; some don't fear if a hundred come near.

Capt. V. How would you feel with fourteen or fifteen men around you with revolvers in their waists?

Witness. I would remain quiet. I would bring a complaint against them through the head officer.

Capt. V. But supposing you had not a chance of making a complaint, what would you do then?

Witness. I could not help that. I must take my chance.

Capt. V. Then, if I find a Japanese doing wrong, am I quite justified in tying him up, doing what I like with him, and not let him say anything to his Japanese officer?

Witness. I can't understand so complicated a thing, you must ask the high officers.

Capt. V. Is it right then to steal a Japanese?

Witness. No, it is very bad.

Capt. V. Do you not think it equally bad on the part of the Japanese to steal an Englishman?

Witness. I can't answer.

Capt. V. But he shall answer, (a great deal of trouble in getting the answer.)

Witness. If a foreigner has done anything against the Japanese Government, they can do it.

Capt. V. Do you think that when an European is taken, the Consul should be made acquainted with the fact?

Witness. I don't know.

Capt. V. I shall not take that as an answer. (The man however would not answer.)

Capt. V. Did you see the gun fired, and at what distance were you?

Witness. I heard the shot, but have not seen it. I was about one and a half mats distant, (*a mat is about six feet long*).

Capt. V. Was the gun in Mr. Moss's hands, were his arms free, or had any one hold of him?

Witness. It was in his hands, he was not yet touched.

Capt. V. Did you see Mr. Moss pull the trigger?

Witness. No, I have not seen.

Capt. V. Where was the gun when you heard it go off?

Witness. In Mr. Moss's hands.

Capt. V. You saw it, then?

Witness. Yes. (To this the man put his stamp.)

Capt. V. Did Mr. Moss take aim? and take the gun and show how Mr. Moss stood.

Witness. I saw him take aim, not putting the gun up to the shoulder, above the hip.

Capt. V. When the shot was fired, did several officers rush on Mr. Moss? was he struck blows? by whom? with what weapons? and when?

Witness. Mr. Moss was thrown down.

Capt. V. Was that done by several officers?

Witness. By several officers, but by whom I do not know.

Capt. V. By how many?

Witness. I can't tell.

Capt. V. Did you rush on Mr. Moss?

Witness. Yes.

Capt. V. With ropes?

Witness. With my hands.

Capt. V. Was Mr. Moss pulled down with violence?

Witness. Yes, with force, and I went down with Mr. Moss, and I received many kicks also.

Capt. V. Was Mr. Moss struck when down?

Witness. I had nothing to beat him with.

Capt. V. Do you know what Mr. Hosokurar's charge is?

Witness. I don't know.

Capt. V. Mr. Hosokurar never gave you any orders not to beat Mr. Moss?

Witness. I know Mr. Hosokurar gave orders not to beat him.

Capt. V. You had no iron stick, or anything to beat him with?

Witness. No.

Capt. V. Does this witness mean to say, that Mr. Hosokurar has said what is not true?

Witness. What difference from Mr. Hosokurar?

Capt. V. Mr. Hosokurar stated that you had given Mr. Moss some blows.

Witness. (Does not reply.)

Capt. V. Do you mean to say that what Mr. Hosokurar states is not true?

Witness. I say the same thing as Mr. Hosokurar.

Capt. V. Why did you not obey orders, and not beat Mr. Moss?

Witness. That is different, Mr. Hosokurar gave orders not to beat Mr. Moss, but others may have done it.

Capt. V. Did Mr. Moss fall on his face, or his head, or how did he fall?

Witness. With his face on the ground.

Capt. V. Have you seen any blood on Mr. Moss?

Witness. Yes; I saw some blood about the eyes.

Capt. V. On which side was the blood?

Witness. On the right side.

Capt. V. Did the policemen get out their staffs?

Witness. I have not seen them in their hands. I was on the top of Mr. Moss on the ground.

Capt. V. Do you know any of the policemen if you were to see them?

Witness. No, I could not, there was such great confusion.

Capt. V. When Mr. Moss was on the ground, what did you do?

Witness. Tied him with a rope.

Capt. V. Where did you get the rope from?

Witness. I do not know who gave me the rope.

Capt. V. Did you go into a house and fetch it?

Witness. No, I did not.



Capt. V. Was it brought by another person?

Witness. Yes.

Capt. V. Then you are quite sure it did not come from a house?

Witness. It was given by men to me.

Capt. V. Did Mr. Moss continue to make resistance after he was thrown down?

Witness. Oh! Yes.

Capt. V. Was he tied with cord on the spot, and describe carefully how he was tied?

Witness. (Here described the manner, but said that when in the tea house the arms pained, and were changed from behind to in front.)

Capt. V. Did you see it done?

Witness. Yes.

Capt. V. Who changed the position of Mr. Moss's arms?

Witness. I, myself.

Capt. V. And was not Saisky there?

Witness. I think not.

Capt. V. Don't you know?

Witness. I do not know.

Capt. V. When Mr. Moss was tied up in the streets, was the palm or back of his hand touching his back?

Witness. The back of his hand to the back.

Capt. V. Who tied Mr. Moss on the spot?

Witness. I did. I had orders.

Capt. V. Who from?

Witness. Seto Kinsymon, a police officer.

Capt. V. Did you go into the tea house with Mr. Moss?

Witness. Yes, once, then I went back immediately.

Capt. V. Did you see anything put underneath Mr. Moss's arm to rest it, when he was in the tea house?

Witness. They gave Mr. Moss some rest, as he said it pained him much.

Capt. V. Did an officer come in and order the rest to be removed?

Witness. No, it is not.

Capt. V. Did you see the interpreter Shuoyar come into where Mr. Moss was?

Witness. I have not seen him, because I had gone away.

Capt. V. How long did you stop in the tea house when Mr. Moss was taken?

Witness. I am not sure, but till about dusk.

Capt. V. Who were the Yarkuneens who came to see Mr. Moss whilst there?

Witness. I had gone back at once to my home. One officer, but I do not know his name. I am not certain.

Capt. V. Do you know Mr. Seto Kinsymon?

Witness. Yes.

Capt. V. Do you know the names of the officers around me now?

Witness. Yes.

Capt. V. And you will swear that not one of these officers went into the tea house to see who Mr. Moss was?

Witness. No, not one of these then.

Capt. V. Do you think that they did not know a foreigner was taken till late in the evening?

Witness. I think they knew it directly the case happened.

Capt. V. Was Saisky in the room all the time?

Witness. Yes, he was.

Capt. V. Do you think the cords were tied very tightly; tighter than is required for a prisoner not to use his arms or legs?

Witness. The usual tightness.

Capt. V. When they tie a man up, do they put him to as much pain as possible?

Witness. Neither hard nor loose, but between the two.

Capt. V. You just said Mr. Moss was in pain, how do you account for it?

Witness. When a Japanese is tied up in that way he is not generally hurt, but I suppose Mr. Moss being a foreigner was hurt.

Capt. V. Did you see that Mr. Moss was in pain?

Witness. I knew Mr. Moss was in pain, therefore I loosed the ropes.

Capt. V. Do you now, therefore, think it was necessary with fourteen or fifteen officers upon a man, to tie the ropes so tightly?

Witness. Because Mr. Moss kicked and wanted to get away.

Capt. V. Why need they have cut his head open and tied him so tightly, when fourteen or fifteen men had got him down?

Witness. After they had thrown him down he kicked and

wanted to get away, and would not be quiet. He only kicked before he was tied up, he could not after.

Capt. V. Was not Mr. Moss kicked before he came to the ground?

Witness. I do not know.

Capt. V. Describe how Mr. Moss came to the ground.

Witness. With a Japanese, if he won't be quiet we beat him with an iron stick till he is quiet and tied up.

Capt. V. And will you swear Mr. Moss was not struck with an iron stick?

Witness. I can't swear. I have not hit Mr. Moss, but I can't say for the other people.

Capt. V. Who were the other people?

Witness. Policemen.

Capt. V. Where was Mr. Moss taken when he was lifted up?

Witness. To the tea house close by Ingatyar.

Capt. V. What is the name of the men or the people who kept the tea house?

Witness. I do not know. (Captain Vyse saw Mr. Hosokurar make a sign to the witness not to say what the name of the keeper was; but when Captain Vyse said he should be reported for so doing, Mr. Hosokurar himself said that the keeper's name was Keehay.)

Capt. V. Did this witness see me there?

Witness. No, I have not.

Capt. V. Had you any orders not to let any European see Mr. Moss?

Witness. When I was there, I had not been given any orders.

Capt. V. Where was Mr. Moss taken to, after he had been taken to this house, till when he left for prison, and at what time did he leave for the prison?

Witness. I do not know.

Capt. V. Was it day-light?

Witness. No, it was dusk, after six o'clock.

Here the inquiry concluded, and I put in my statement under oath, and my claim for \$30,000 against the Japanese Government, for a brutal outrage and illegal detention, quite unprovoked on my part; a clear statement of what took place after leaving Yokuhama until I was released by Captain Vyse, and I requested

that these two documents should be placed in Mr. Alcock's hands for perusal and consideration, and that he should urge them before the Japanese Government very strongly, and I further requested that the statement and the claim should be recorded in the Archives of the Consulate.

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No. V.

## COPY OF INDICTMENT.

THE "QUEEN" v. MOSS.

*At the Suit of the Governor of Kanagawa.*

WHEREAS complaint having been made in this cause that Michael Moss did, on the 27th day of November 1860, proceed into the country for the purpose of shooting, and did, while within the limits of the Port of Kanagawa, then and there shoot a goose or other bird, contrary to the laws of Japan: And, secondly, did further on the same day, in the town of Kanagawa, assault and wound "O-yar-koo-ni-thar-ro," an officer of the Tycoon, while in the execution of his duties, and did obstruct the said officer and divers others in the apprehension of the said Michael Moss: And, thirdly, did further feloniously, with a certain gun then and there loaded with gunpowder and divers leaden shot, shoot at and against the said "O-yar-koo-ni-thar-ro," with intent in so doing then and there to do him some grievous bodily harm, unlawfully and maliciously inflicting on the said "O-yar-koo-ni-thar-ro" a dangerous wound, the better to resist and prevent the lawful apprehension and detaining of him, the said Michael Moss, contrary to the statute in such case made and provided, and against the peace of Our Lady the Queen, her crown and dignity: And these several charges having been adequately supported by evidence, the said Michael Moss stands committed for trial in a Consular Court to be holden at Kanagawa on the 12th day of December 1860, there to meet the charges aforesaid, and to be dealt with according to Law.

( Consular  
Seal.  
Kanagawa. )

F. HOWARD VYSE,

*H.B.M.'s Acting Consul.*

BRITISH CONSULATE,  
Kanagawa, 6th December, 1860.

## No. VI.

## THE TRIAL.

*The evidence and proceedings in the Trial of the Case as Indictment "THE QUEEN v. MOSS," at the suit of the Governor of Kanagawa. Tried before Capt. F. HOWARD VYSE—Consul and Judge; A. MACPHERSON, Esq., JOHN B. ROSS, Esq., EDWARD CLARK, Esq.—Assessors.*

The Court opened at 12 o'clock, Wednesday, the 12th Dec. 1860.

Dr. Simmons, the first witness called, after having been sworn—Mr. Cooper Turner commenced to question him.

Mr. C. T. What is your christian name?

Dr. S. Duane.

Mr. C. T. You are practising in Yokuhama as Surgeon?

Dr. S. Yes.

Mr. C. T. Were you called on to attend Mr. Moss as a Medical man?

Dr. S. Yes.

Mr. C. T. About what day?

Dr. S. About the 23th last month.

Mr. C. T. At what time in the day did you come?

Dr. S. About afternoon.

Mr. C. T. In what state did you find him?

Dr. S. On coming in I found Mr. Moss lying on the bed, and on making an examination I found his pulse very frequent, tongue furred, face flushed, evidently a little fever. His physical condition was as follows:—The right eye was somewhat swollen, with effusion of blood. On the temple there was evidence of a bruise from some source. The back part of his head seemed the most serious injury, quite a large wound and the skin broken, seemed as if there had been hemorrhage, but there was none at that time. There were evidences of other injuries on the head, but not to compare with this. What I speak of were the principal ones, on his body, the front of his shoulders was black and blue, and the patient complained of pain in breathing, said it hurt him in lower part of the chest; also, soreness and stiffness all over the body. This soreness and stiffness about the

body lasted for about three or four days, more or less. Believes he complained of pain in the back, near the lumbar region. Only saw him five times, when he had considerably improved. He had evidence the days I saw him of injury more or less apparent with fever.

Mr. C. T. Were there several marks of injury on the head?

Witness. On the temple, right eye and back of head, these principally attracted my attention.

Mr. C. T. He gave evidence of severe beating?

Dr. S. Yes, his shoulders were blue, and the marks I have already stated showed evidence of injuries.

Mr. C. T. Do you think he suffered from internal injuries?

Dr. S. I thought at the time he did, but the internal treatment after a few days did him good; when I left off attending him he still complained of some internal trouble.

Capt. Vyse. Did you consider the injuries Mr. Moss received were likely to leave their effects on him in after life?

Dr. S. It is impossible to say about the internal injuries.

Capt. Vyse. Were they flesh wounds?

Dr. S. On the head and forehead, they were what is called flesh wounds; it is impossible to say about the internal injuries, they might show themselves after some time.

Capt. Vyse. Would you say that the pains Mr. Moss suffered from, were muscular pains?

Dr. S. It is impossible to say.

Capt. Vyse. Do you think he had contusion of the lungs?

Dr. S. No. The injury was not in that quarter, frequently injuries show themselves after a long time.

Capt. Vyse. Do you think that the wounds received by Mr. Moss justify a claim of \$ 30,000 against the Japanese Government?

Dr. S. As far I have seen I should think not.

Mr. C. T. You can't say whether or not the lungs were affected?

Dr. S. Not positively; I should think not.

*Dr. Hepburn next examined.*

Mr. C. T. I believe you are a physician?

Dr. H. Yes, I am.

Mr. C. T. A resident of Kanagawa?

Dr. H. Yes.

Mr. C. T. I believe you were requested to see Mr. Moss, when, and at what time?

Dr. H. I really could not say the day now.

Mr. C. T. About the 27th?

Dr. H. Unless I went home to see my book I could hardly say.

Mr. C. T. About what time?

Dr. H. About ten o'clock.

Mr. C. T. Be good enough to state how you found Mr. Moss?

Dr. H. I found Mr. Moss in bed, with a pulse over 100, evidence of a good deal of fever, with an eye very much contused, red from a blow I suppose he had received, and with a severe contusion at back of the head. The second time I called to see Mr. Moss, was in the evening I think, and with abrasures of skin in sundry places on left side of face and temple.

Mr. C. T. Did you examine the body?

Dr. H. No, Sir, I did not. I did not see him after that, I resigned the case into the hands of Dr. Simmons.

Mr. C. T. You can't speak of internal injuries?

Dr. H. No. I did not examine, and from appearances of what I saw, I did not expect there were any.

Mr. C. T. Did you notice his breathing?

Dr. H. The pulse was at 100, without it being once accelerated, which is a sign of fever. I saw Mr. Moss, the day after the occurrence in the Tokaido. The day after the injuries.

Capt. Vyse. With reference to the Japanese wounded man, could you give any idea of the position of the gun when he received the injury?

Dr. H. It must have been a horizontal wound.

Mr. C. T. It was not a point blank wound, the arm had been hit near the side?

Dr. H. No, I should think not.

Capt. Vyse. You said Mr. Moss was suffering from abrasures of the skin, is that a surface wound?

Dr. H. Yes: a surface wound.

Capt. Vyse. To look at Mr. Moss, would you say his health was impaired, or that his health may be impaired afterwards?

Dr. H. Merely from looking at him I should say not. I should not think the wound I have seen would impair his health for life, but a slighter wound has been known to cause death ; not immediately but in after life, by inflammation of the brain.

Capt. Vyse. With respect to Mr. Moss's claim for \$ 30,000 ?

Dr. H. It is very difficult to say what the money value of a wound is. I should say that was a very uncertain quantity. How do you want me to answer that ?

Capt. Vyse. Merely if Mr. Moss's health is injured he has some claim ?

Dr. H. So far as the mere physical injuries and sufferings were concerned, I should say not.

Capt. Vyse. You just said that the wound of the Japanese looked as if it had been a horizontal one. Do you think the gun was fired from the shoulder or hip ?

Dr. H. That is really a matter I could not say, but I should think it was fired from a lower position than the shoulder.

Capt. Vyse. From what you saw of the wound, should you think the charge of the gun went from the outside, or inside of the arm ?

Dr. H. From the front ; I should think the man was right in front of the gun.

Capt. Vyse. As near as you can judge you say, the wounded man was directly in front of the man holding the gun ?

Dr. H. I should think he was not far from facing, he might have been a little to the right.

Mr. C. T. A question was put you, whether the claim was out of the way. Now if Mr. Moss's life has since been threatened would you think the claim then would be unfounded ?

Dr. H. No. I spoke only physically. I should not think \$30,000 would be a considerable claim. I spoke of the mere physical suffering, but that is often calculated by his position in life, and loss by its effect on his business.

Capt. Vyse. You still think as far as the wounds go ?

Dr. H. Not for the mere physical injury, if things are to be estimated that way.

*1st Japanese witness (Ukarwar Kosymon).*

Mr. C. T. Is that form of oath binding on your conscience ?

Witness. Yes.



Mr. C. T. What would be your punishment if what you stated were not true?

Witness. I don't know what punishment there is.

Mr. C. T. What office did you hold in the Custom House?

Witness. Officer of the 4th class.

Mr. C. T. How long is it since you have seen Mr. Moss at the Custom House?

Witness. I have never seen Mr. Moss at the Custom House.

Mr. C. T. When was the first time you had seen Mr. Moss?

Witness. I do not recollect Mr. Moss, although it is possible I have often seen Mr. Moss asking for permits and other business at the Custom House; but I did not recognise Mr. Moss in the streets of Kanagawa, or would not have seized him.

Mr. C. T. Were not express orders given you to take into custody any body out shooting?

Witness. Yes. I had express orders from the Governor.

Mr. C. T. On that day you went out with the purpose of arresting Mr. Moss?

Witness. I only went to ask Mr. Moss's name.

Mr. C. T. You swore in your evidence that you went to question Mr. Moss's servant?

Witness. Yes. I went to question Mr. Moss's servant, but when I came up Mr. Moss walked away.

Mr. C. T. You swore that before you could question the servant the gun was fired?

Witness. Before the answer could be given Mr. Moss fired his gun.

Mr. C. T. Then you had no opportunity for questioning Mr. Moss or saying who he was?

Witness. No. I have never spoken to Mr. Moss.

Mr. C. T. What distance were you off when the gun exploded?

Witness. Two and a half or three mats.

Mr. C. T. Was there a great deal of confusion going on when they met Mr. Moss?

Witness. Yes, a great deal of confusion.

Mr. C. T. Were you sufficiently near to give the position of the gun when it exploded?

Witness. When the gun went off I was behind Mr. Moss, but could not see how it was fired.

Mr. C. T. You can't say where Mr. Moss was, when the gun went off? on the ground, or on his legs?

Witness. Mr. Moss was standing.

Mr. C. T. Did you see the wounded man immediately after he was wounded? did you examine him?

Witness. Yes. I have seen him.

Mr. C. T. Explain the position of the wound, whether it touched his clothes or not?

Witness. The shot hit the man's arms, it might have hit him in the body, but I think it was through the arm.

Mr. C. T. You can't say who pulled the trigger of the gun?

Witness. I can't swear, I do not know.

Mr. C. T. Had you any distinguishing mark on approaching Mr. Moss?

Witness. No, not when I approached Mr. Moss, but Mr. Moss's servant might have known it.

Mr. C. T. Have you ever heard any complaint against an Englishman for shooting game or trespassing?

Witness. I don't know.

Mr. C. T. You are not versed in the Law of Japan?

Witness. I know the Japanese Law very well.

Mr. C. T. Were you bred up a lawyer?

Witness. I do not know any law, but when I am on duty I know how I am to act.

End of Examination of 1st witness. My letter and statement were then read through, and Captain Vyse called Hosokurar as a witness.

Capt. Vyse. What is your name and office?

Witness. Hosokurar Kinsymon, an officer of first rank.

Capt. Vyse. Is there any form of oath binding on your conscience, and what is it?

Witness. With my stamp.

Capt. Vyse. Is there any penalty if you make errors in your statements? Do you consider it a disgrace?

Witness. Yes, if I put my seal, but I would go to the Governor and make it straight. I do not know what the punishment would be. The Governor would give orders what the punishment would be, and if the Governor could not the Minister would.

Capt. Vyse. Do you remember the 15th last Japanese month, and were you present when the officers approached and surrounded Mr. Moss?

Witness. Yes. I was present.

Capt. Vyse. Did you know what the defendant's name was, if he were an Englishman or even a foreigner?

Witness. I see Mr. Walsh (the Marshall and Secretary of the Court) takes down in English, how am I to know if mistakes don't occur?

Capt. Vyse. No mistakes will occur, but your men can take down all they like.

Witness. I speak of the mistakes that happened before.—I have no copy of what has gone on.

Capt. Vyse. The Minister will have one.—I don't know if you will have one; all you have to mind is to speak truly and be guarded in what you say.

Capt. Vyse. Did you know defendant's name?

Witness. No, Mr. Moss was unknown to me.

Capt. Vyse. What orders had you?

Witness. I had orders from the Governor if any foreigners went out shooting that I was to take them prisoner.

Capt. Vyse. Do you know what the Law of Japan is about shooting birds?

Witness. Shooting was already forbidden 120 years ago.

Capt. Vyse. Have you ever seen the Law in print?

Witness. When I entered on my duties, my superiors told me all the laws.

Capt. Vyse. You say you had orders to take Mr. Moss for shooting—the men under your orders say that if Mr. Moss had not shot the officer they would not have arrested him, how is this?

Witness. When I was in the Hongee on the 15th last Japanese month, officers came and reported that a foreigner was walking in the streets and his servant carrying a gun. I sent two officers (who could not speak English) to ask Mr. Moss's servant what Mr. Moss's name was, but that Mr. Moss took his servant away, and then I and Mr. Nagarsakar came up, and I said "Your name?" to which Mr. Moss did not reply, but raised his gun, pointed it at me, and afterwards shot Oyarkunetaro. If Mr. Moss

had answered he was an Englishman, and that his name was Mr. Moss, he would not have been seized.

Capt. Vyse. After this witness had asked Mr. Moss "Your name" did Mr. Moss immediately point the gun at him? state this distinctly.

Witness. As soon as I said "Your name," Mr. Moss pointed the gun at me.

Capt. Vyse. Did you see the gun fired, and where were you?

Witness. Mr. Moss was right in front—I was to the left—I saw the gun fired.

Capt. Vyse. Where was the wounded officer standing?

Witness. This plan will show the position of the several men.

*The Tokaido, running through Kanagawa.*

---

To Yokuhama.

● Nagarsakar.

To Yedo.

● Mr. Moss.

● Oyarkunetaro.

● Hosokurar.

---

Capt. Vyse. Did you see Mr. Moss pull the trigger?

Witness. Yes.

Capt. Vyse. Did he take aim? and show the Court how he stood?

Witness. (The witness showed how I stood quite truly) and that Mr. Moss said "*Backar that the gun was loaded with ball, to take care,*" but that the gun was fired in Mr. Moss's hands without taking aim—did not bring the gun to the shoulder.

Capt. Vyse. When the officers saw Mr. Moss jumping back did they go back or advance on him?

Witness. When Mr. Moss went back I sidled up to Mr. Moss and did not present my whole front to him.

Capt. Vyse. Did the defendant always keep the gun levelled and pointed towards you and the other officers?

Witness. Yes, he always did.

Capt. Vyse. Was there one shot or two? and do you think Mr. Moss wanted to shoot any body?

Witness. One shot, and I am certain Mr. Moss shot with intention as he said, "*Backar, take care my gun is loaded with ball.*"

Capt. Vyse. What makes you feel certain that he wanted to shoot a man, if he said his gun was loaded and to take care?

Witness. I think Mr. Moss wanted to shoot because he cocked his gun, and if Mr. Moss had not intended to shoot he would not have cocked the gun. I know how to use a gun myself.

It being 4 o'clock the Court adjourned till 10 o'clock next morning, Thursday 13th December, 1860.

The Court opened at 10 o'clock Thursday morning 13th December, 1860. Hosokurar having had his evidence of yesterday read over to him and acknowledging the truth of the depositions, as they represented the sense of what he wished to convey, placed his stamp to the evidence, and then his cross-examination by Mr. Turner commenced, (this gentleman had been detained a half hour at the Yokuhama Boat-house, through the Custom House officers compelling a search of his desk).

Mr. C. T. Do you hold a high Office in Kanagawa under the Japanese Government?

Witness. Yes. Head officer in Kanagawa—are you a merchant or officer?

Mr. C. T. A Queen's officer at Hong-Kong.

Witness. Are you here on Service?

Capt. Vyse. Why these foolish questions—Mr. Turner is quite authorized to act in this Court or would not be here.

Mr. C. T. If you had retained me for your Case, I should have been happy to have placed my services at your use, but Mr. Moss having requested me to plead for him, I am therefore here for him.

Witness. Very well, I understand.

Mr. C. T. Do the Japanese Government keep a Register of all the servants employed by foreigners?

Witness. Yes. They do.

Mr. C. T. Have you not the power to arrest a Japanese servant attached to a foreigner?

Witness. I have the power to arrange everything, but I have police officers under me.

Mr. C. T. To whom you can give orders to do so?

Witness. Yes. If any servant does wrong and the Consul complains of him, I can arrest him.

Mr. C. T. Was Mr. Moss's servant arrested on the day of the collision?

Witness. He had been taken prisoner that day.

Mr. C. T. Did they apply to him for Mr. Moss's name after taking him prisoner? (the servant)

Witness. Yes. They have—by another officer, the servant had been asked.

Mr. C. T. After having obtained Mr. Moss's name why did you not lodge a complaint against Mr. Moss before the Consul?

Witness. (Did not want to answer that question.)

Mr. C. T. Why did you not consult the register for the servant's name, which would have at once shown whose servant he was, when you could have lodged a complaint before the Consul?

Witness. They could not find Mr. Moss's name by the servant, but they could have found the servant's by looking at Mr. Moss's, but the idea never struck me.

Mr. C. T. If the idea had struck you, the collision would never have occurred.

Witness. This collision has happened because Mr. Moss refused to answer his name, and pointed his gun.

Mr. C. T. You have never studied the English language?

Witness. I have never studied the English language.

Mr. C. T. You can't talk any broken English, or pidgin English?

Witness. The only thing I know is "your name."

Mr. C. T. Have you had the Treaty explained to you, between England and Japan?

Witness. Yes. I understand it.

Mr. C. T. What distance from the house of the English Consulate did the collision occur?

Witness. About 180 mats from the Consulate.

Mr. C. T. Why did you not order at once, that Mr. Moss should be taken before the English Consul?

Witness. I thought, I was aware that Mr. Moss should be brought before the Consul, but as this was a very difficult case, a Japanese being shot, I could not take upon myself the responsibility without consulting the Governor.

Mr. C. T. Then it was by the Governor's orders Mr. Moss was not delivered to the Consul?

Witness. The Governor has *not* given orders that Mr. Moss was *not* to be brought to the Consulate, but after Mr. Moss had been taken Capt. Vyse and the Consul went to the Tobe.

Mr. C. T. Then you have taken upon yourself the responsibility of breaking the Treaty?

Witness. I have not broken the Treaty and should like to know how it is broken.

Mr. C. T. Yesterday you said you knew the art of gunning?

Witness. Yes. I have studied it.

Mr. C. T. Have you also studied sword exercise?

Witness. My father is a master in the art—Yes—I have.

Mr. C. T. Which do you think the most dangerous weapon—the sword, or gun?

Witness. The gun. Because you can shoot far distant, and with the sword we can parry blows from swords.

Mr. C. T. When you wish to hurt—do you take aim?

Witness. Of course.

Mr. C. T. And if you took no aim you would have no intention of shooting anybody.

Witness. I call both ways taking aim, whether by bringing it up to the shoulder—or merely presenting it from the hip—as Mr. Moss did.

Mr. C. T. Do you not state in your charge two shots were fired?

Witness. One shot.

Mr. C. T. What became of the other shot?

Witness. One charge remained in the gun, and as it was dangerous, they filled the gun with water.

Mr. C. T. Then why did you make a charge against Mr. Moss for shots?

Witness. I am quite sure now, but at the time I thought as the man was wounded in two places, that two had been fired.

Mr. C. T. Was there much confusion at the time?

Witness. Yes. There was much confusion in the Tokaido.

Capt. Vyse. What is the form of examination if a Japanese is brought before his Court what is the first question put to him?

Witness. I can't tell that now exactly, but there is a great difference between English and Japanese.

Capt. Vyse. Have I ever seen you examine any merchants at the Hongee?

Witness. Yes.

Capt. Vyse. Is not the first question asked, what is your name ?

Witness. Yes.

Capt. Vyse. When they took Mr. Moss's servant did they ask his name ?

Witness. No. He has not been asked any question.

Capt. Vyse. When you saw Mr. Moss's servant in the street, or wherever the servant was taken, was this servant not asked his name ?

Witness. Perhaps he has been asked that question.

Capt. Vyse. Who asked him ?

Witness. I don't know.

Capt. Vyse. Have you seen me at the Hongee that day ?

Witness. Yes.

Capt. Vyse. Did I speak to you ?

Witness. Yes.

Capt. Vyse. What did I say ?

Witness. The Consul asked to what nation the prisoner belonged, and where the wounded man was ?

Capt. Vyse. Did I ask where Mr. Moss was ?

Witness. No, you did not ask where Mr. Moss was.

Capt. Vyse. Was that officer yonder writing there (pointing to a man in court) on duty in the Hongee that day ?

Witness. Yes, he was.

Capt. Vyse. Where was he ?

Witness. In the Hongee.

Capt. Vyse. He was not in the front of the watch-house where the wounded man was ?

Witness. When the Consul asked to see the wounded man that officer was sent to show the way.

Capt. Vyse. Send that officer away, I shall want him soon as a witness—(the official alluded to left the Court).

Capt. Vyse. What time was Mr. Moss taken ?

Witness. I think between one and two o'clock.

Capt. Vyse. Was Mr. Moss taken to the Hongee, or the Tea-house ?

Witness. Not to the Hongee—to the Tea-house.

Capt. Vyse. Were you aware of that on the 15th of last Japanese 10th month ?



Witness. I had heard it in the Tobee the night after the seizure.

Capt. Vyse. Was any one with me when I spoke to you?

Witness. Yes. I had seen another foreigner.

Capt. Vyse. How many?

Witness. I do not know, I could not count them.

Capt. Vyse. Then you had not seen them?

Witness. The Consul came in first, followed by four or five foreigners.

Capt. Vyse. How did you go to the Tobee?

Witness. In the afternoon, by boat, at night by horse.

Capt. Vyse. Have you ever been to report that an Englishman had been taken, and to ask the Consul to identify him?

Witness. No. But the Governor has made a plaint in writing.

Capt. Vyse. I shall not ask this witness any more questions, and I caution him that as his answers have not been in strict accordance with truth, he will be treated with at Yedo.

The prosecution then having no more witnesses to call; for the Defence Mr. Thos. Howell was the first witness called, and after being sworn :—

Mr. C. T. What is your christian name?

Witness. Thomas.

Mr. C. T. You are a merchant of Japan?

Witness. Yes.

Mr. C. T. How long have you resided in Japan?

Witness. A little more than a year.

Mr. C. T. Have you frequently been in the habit of going out shooting?

Witness. Frequently last year,

Mr. C. T. Have you this year?

Witness. Yes.

Mr. C. T. Have you ever received any notice from the Japanese or their Custom-House to discontinue shooting?

Witness. When returning from shooting once an official Japanese said shooting was *bad*, that is all.

Mr. C. T. Have you frequently, during last year and this, walked through Yokuhama with a gun?

Witness. No. I used to go behind the swamp, I have this year walked once through Kanagawa, and through Yokuhama several times.

Mr. C. T. You were never cautioned, arrested, or interfered with by the Japanese authorities ?

Witness. Never cautioned—never arrested, and interfered with once by the Japanese officers following us when at Kanasawa.

Mr. C. T. Were Coolies ever arrested for carrying game or your gun ?

Witness. Not at any time.

Mr. C. T. Have you been in the habit of killing much game ?

Witness. Not myself.

Mr. C. T. I suppose you went out in company ?

Witness. Generally, last season I went out several times by myself.

Mr. C. T. Will you name who have been out with you last season—and this ?

Witness. Mr. Barber, Mr. Preston, Mr. Tatham, Mr. Bell, Mr. Kinnear.

Mr. C. T. I suppose among you a good deal of game has been killed ?

Witness. Yes ; for Japan.

Mr. C. T. Are you aware of any of these gentlemen having been interfered with ?

Witness. Not to my knowledge.

Mr. C. T. Are you aware of any Japan law against shooting ?

Witness. Only that I heard from a Japanese merchant that we are not allowed to shoot within ten ri of Yedo.

Mr. C. T. You have not shot beyond the limits ?

Witness. Excepting on one occasion, always within the limits.

Mr. C. T. You have not been notified by the Consul or by any notification from the Consular Court ?

Witness. I never saw the Circular.

Mr. C. T. Was there any notice in the Consular Court exposed ?

Witness. I have never seen any.

Mr. C. T. That is all I have to put to this witness.

*By the Court.*

Capt. Vyse. Are you well acquainted with Mr. Moss ?

Witness. Not intimately acquainted with Mr. Moss.

Capt. Vyse. Met him in society at Yokuhama ?

Witness. Yes.

Capt. Vyse. Is he a passionate or cool determined man?

Witness. I could not say.

Capt. Vyse. Are you acquainted with his handwriting?

Witness. I could not swear to it. (Witness signed his depositions.)

*Mr. Bell, next witness called.*

Mr. C. T. What is your christian name?

Witness. Frederick Hayley,

Mr. C. T. A merchant residing in Yokuhama?

Witness. Yes.

Mr. C. T. How long have you resided in Yokuhama?

Witness. About six months.

Mr. C. T. Have you been out shooting much?

Witness. Yes; very frequently.

Mr. C. T. For Japan have you bagged much game?

Witness. No; I am a very bad shot.

Mr. C. T. You have had your eye wiped sometimes?

Witness. Yes.

Mr. C. T. Not in the way Mr. Moss's eye was wiped?

Witness. No; quite the reverse.

Mr. C. T. You were never interfered with?

Witness. Not in the least, quite the contrary.

Mr. C. T. Either by the Japanese authorities, officers, or policemen?

Witness. Not at all.

Mr. C. T. Have your servants carrying guns or game ever been arrested?

Witness. On the day Mr. Moss was arrested—not before.

Mr. C. T. Before Mr. Moss was taken have you ever received any notification either from the Japanese or the English Consulate?

Witness. I understood there was an objection, but have never received any notice.

Mr. C. T. Was there any notification posted in the Consular Court calling your attention to the laws prohibiting shooting?

Witness. I can't say, I never saw one.

Mr. C. T. Have you ever been informed by proclamation or otherwise of the Japanese law against shooting?

Witness. No.

Mr. C. T. Will you name the gentlemen who accompanied you in your shooting excursions?

Witness. I have no objection to state for myself, but do not wish bringing in any one else. I do not think any one has been out shooting after Mr. Moss's arrest.

Mr. C. T. I merely put the question as to whether any one has been interfered with.

Witness. There is Mr. Howell—there have been several persons out with me but they have never been interfered with when I was with them. I was more frequently out with Mr. Howell than any one else.

Mr. C. T. I suppose your servant returned with your game and gun?

Witness. With the game, but I never trusted my gun to a servant.

*By the Court.*

Capt. Vyse. Have you been in the habit of meeting Mr. Moss often, and can you judge whether Mr. Moss is a cool determined man, or a hot tempered hasty one?

Witness. I should certainly not think him a hot tempered hasty man, but I can't say whether he is cool, or determined. I do not know his handwriting sufficiently to swear to it. I have not had any business dealings with Mr. Moss.

This witness then signed his depositions.

*Mr. Aspinall, next witness, called and sworn.*

Mr. C. T. What is your Christian name?

Witness. William Gregson.

Mr. C. T. You are a merchant residing at Yokuhama?

Witness. Yes.

Mr. C. T. Are you acquainted with Mr. Moss?

Witness. Yes.

Mr. C. T. And his handwriting?

Witness. Yes. I think so.

Mr. C. T. Can't you swear to it?

Witness. Yes. (When shown Mr. Moss's handwriting, said he believed it was his.)

Mr. T. C. Will you be good enough to read this indictment under which Mr. Moss is charged. After reading the indictment

filed against Mr. Moss be good enough to give Mr. Moss's general character and conduct in this country.

Witness. Having read it, said—I have known Mr. Moss since I have been here since May, and intimately during the last two months, and as far as I know do not think he would have acted (as peaceable a man as any in the place) as he has without strong provocation. I have never seen anything in him to construe into a different light, and don't think he would provoke anything of the kind.

Mr. C. T. Please place the original statement of Mr. Moss's in Mr. Aspinall's hands (to Capt. Vyse). This being done, and after Mr. Aspinall had read it.

Mr. C. T. Read it throughout—you have now perused the statement.

Witness. Yes, a hasty perusal.

Mr. C. T. Is the handwriting and signature Mr. Moss's?

Witness. Yes, so far as I am able to judge.

Mr. C. T. Do you believe the statement to be a true one, the facts therein contained?

Witness. Yes, I believe Mr. Moss's word.

Mr. C. T. From your knowledge of Mr. Moss, does he impress you with—as having a mild disposition?

Witness. Yes, I think he has.

Mr. C. T. Mr. Moss's life has been threatened to a certain extent, and he has made a claim against the Japanese Government for his arrest, and brutal treatment and detention, and is evidently compelled to leave the country. What do you think would be a fair claim, as he is compelled to leave and sell his ground and throw up his business here?

Witness. He has already made a claim, has he not? (This Capt. Vyse thought an unnecessary question) but after some discussion—

Mr. C. T. Do you think a claim of \$30,000 too much after the treatment Mr. Moss sustained?

Witness. If Mr. Moss finds his life in jeopardy, I believe he is justified; but I do not think that would compensate him for his anxiety, and prospects damaged, and I think his claim is small enough.

Mr. C. T. What do you think would be a fair claim for the wounding and false imprisonment?

Witness. If I had been put in such a position, I do not think any money would have compensated me. I should have claimed \$50,000 or more.

Mr. C. T. How long have you been in Japan?

Witness. Six months.

Mr. C. T. Have you been in the habit of shooting?

Witness. Yes, occasionally, not very much.

Mr. C. T. Before Mr. Moss's arrest were you or your servant interfered with?

Witness. No; not myself personally, but Mr. Bell with whom I was, had his servant taken the same day as Mr. Moss was arrested.

Mr. C. T. Have you ever been made aware of any law against shooting?

Witness. Not since my arrival; not officially. I have heard that there was a warning; there was a circular, I believe, from Capt. Vyse, requesting the community not to shoot, before my arrival.

Capt. Vyse. I believe you are an Englishman?

Witness. Yes.

Capt. Vyse. You know the laws of England?

Witness. Not particularly well.

Capt. Vyse. When a man cocks a gun, do you think it is breaking the peace?

Witness. I think it does not advance it; but that he is warranted, when his life is threatened, to protect himself.

Capt. Vyse. Do you happen to know whether the Japanese officers who took Mr. Moss threatened his life?

Witness. I do not know, but I should think, knowing the Japanese customs and character pretty well, that Mr. Moss's life was threatened.

Capt. Vyse. What do you consider the term in England, when a question is in abeyance? what do you understand by that term?

Witness. In abeyance? that is not settled.

Capt. Vyse. Had you put your name to a Notification bearing these words, would you not think yourself culpable?

Witness. No, it has been a custom here.

Here a Notification issued last year requesting us not to shoot was handed to Mr. Aspinall, who had not seen it before.

Capt. Vyse. Do you think a man was wise in going out shooting?

Witness. Not exactly wise; but I do not think that anything in that Notification could legally prevent a man going out, and since I have been here there has been so much shooting, that it has become a custom.

Capt. Vyse. If ten or fifteen men were to rush and press round you in the streets of Kanagawa, do you think you would have pointed your gun till they explained their object?

Witness. I think I should have acted as Mr. Moss did.

Capt. Vyse. Do you think this Notification was written to protect foreigners or no?

Witness. Yes, I should think so.

Capt. Vyse. From your knowledge of the Yokuhama community, do you think that they are the people to be compelled by notification?

Witness. It was merely out of respect to the Consul that people stayed.

Capt. Vyse. Have there been any murders since you have been in Japan?

Witness. Not since I have arrived, but the two Dutchmen were a few days before I arrived; and Mr. Natel's assassination was attempted since my arrival.

Capt. Vyse. Do you happen to know whether it was daylight when Mr. Natel's life was attempted?

Witness. I believe it was in the daylight.

*Mr. Elmstone, next witness called, and sworn.*

Mr. C. T. You are a merchant of Yokuhama, and have been residing there?

Witness. Yes; nearly sixteen months.

Mr. C. T. Are you acquainted with Mr. Moss and his handwriting?

Witness. Perfectly.

Mr. C. T. Be good enough to read this indictment and also this statement, and state as to Mr. Moss's general conduct?

Witness. I have known Mr. Moss during the time I have been here, and should say, that he was the last man to commit the aforesaid, or to resist the officials in the proper fulfilment of their duty. From the time I have known him, I always found him of a quiet, peaceable disposition, and one of the last men to commit such an act.

Mr. C. T. Is that statement Mr. Moss's writing and signature?

Witness. Yes.

Mr. C. T. From your business knowledge of Mr. Moss, would you think that the facts and circumstances therein contained to be true?

Witness. Certainly I do.

Mr. C. T. If ten or fifteen armed persons were to press themselves round you in the public streets of Kanagawa, would you point your gun at them?

Witness. Certainly; I would not allow them to arrest me without a warrant.

Mr. C. T. Are you aware that Mr. Moss has made a claim against the Japanese Government?

Witness. I see it here, (pointing to the letter of Nov. 30th.)

Mr. C. T. Do you think \$30,000 a heavy amount to claim, for the wounding and false imprisonment?

Witness. No; very little: and from my knowledge of Mr. Moss's plans, I should think, that from the derangement to all his plans, by compelling him to leave Japan, that it is not enough. (This question merely being understood to apply to wounding and false imprisonment, Mr. Elmstone then said.)

Witness. I think \$30,000 not heavy for his wounds and false imprisonment, or the anxiety he sustained during the night, his life being at stake, as was supposed.

Capt. Vyse. Do you know any order not to shoot?

Witness. Yes; I have seen the notification alluded to.

Capt. Vyse. Do you know Mr. Moss's handwriting?

Witness. Yes.

Capt. Vyse. Is his handwriting down there?

Witness. Yes, immediately above mine.

Capt. Vyse. You thought Mr. Moss justified in pointing his gun, can you give me any proof they were going to arrest him?

Witness. I know nothing about the case at all.

Capt. Vyse. What makes you think Mr. Moss would have been then?

Witness. From what little knowledge of the Japanese I have, I should think his life in danger, well knowing the vindictiveness of the Japanese. I have heard that Mr. Moss is a marked man, as well as Mr. Robertson, Bush, and Tatham, but I have heard that



the brothers of the wounded man have made a vow to take Mr. Moss's life. (To these depositions Mr. Elmstone placed his signature.)

*Seto Kinsymon (next witness called.)*

Mr. C. T. You were not present at the time the gun was fired?

Witness. No, not present when the gun was fired.

Mr. C. T. When you arrived Mr. Moss was bound up?

Witness. Whilst they were tying Mr. Moss.

*Ikarwar Sogoro (next witness.)*

This evidence was of so conflicting a nature, that it was thrown out, and therefore is annulled and void.

*Saisky (next witness.)*

Mr. T. C. Whether from want of proper interpretation or no, this witness first swore he never had seen Mr. Moss till in Court, and afterwards says, he is quite ready to swear to what his master says, and then he goes on to swear to an account, which he describes.

Capt. Vyse. I think it no use examining this witness.

*Magotaro (next witness called.)*

Mr. C. T. Were you present when the gun was fired?

Witness. I was present at the collision on my rounds.

Mr. C. T. Were you present before or after the gun was fired?

Witness. Before and after.

Mr. C. T. You stated in your evidence that you heard the shot some distance off?

Witness. Before I gave in my evidence.

Mr. C. T. What distance off were you?

Witness. A mat and a half off from Mr. Moss.

Mr. C. T. What distance were you behind your master?

Witness. I have not got a master.

Mr. C. T. Have you an officer over you?

Witness. Seto Kinsymon is my chief.

Mr. C. T. Was there very much confusion going on?

Witness. Yes; a great deal of confusion.

Mr. C. T. How many officers surrounded Mr. Moss at the commencement of the collision?

Witness. Twelve or thirteen officers.

Mr. T. C. You own to fourteen or fifteen?

Witness. Officers thirteen, and myself, and another, about fifteen.

Mr. C. T. Where was the gun when it went off ?

Witness. When the gun was fired it was in Mr. Moss's hands, but I was behind and did not quite see all that went on.

Mr. C. T. When a Japanese is tied up, is it the custom to beat him about the face and head with an iron stick ?

Witness. In Japan, if a prisoner is quiet they don't beat him, but if not quiet the iron sticks would be used.

Mr. C. T. You were not near enough to see if the iron sticks were used to Mr. Moss ?

Witness. I have seen the iron sticks, but can't say whether Mr. Moss was beaten with them.

Mr. C. T. You can't swear Mr. Moss was beaten with them ?

Witness. As Mr. Moss had marks on his head I think he must have been beaten, but don't know who did it.

Mr. C. T. Did you hear any conversation—or officer putting questions to Mr. Moss before they attacked him ?

Witness. No ; I have not heard anything.

Mr. C. T. Was Mr. Moss pulled down with great force ?

Witness. Not very forcibly—as usual.

Mr. C. T. In the way they treat the Japanese ?

Witness. Yes.

Mr. Moss then said, the cross-examination of all the witnesses being finished, he would wish to sum up his case, and place his defence before the Court, but that as the matter in evidence was so very full and ample, he would require some time to arrange it in form, so as to put it before the Court in as clear a shape as possible, and therefore requested he might be allowed two clear days for such purpose—to this the Court gave their permission, and Capt. Vyse said, the Court was adjourned till Monday, at ten o'clock, 16th December, when it would hear the defence.

On the 16th December, 1860, the Court opened to hear the defence, as per copy and outline herewith. It opened at ten o'clock.

Having finished the defence at half-past twelve o'clock, the Court was cleared for the Judge and Assessors to decide on their verdict.

At half-past two, on being recalled into Court, Capt. Vyse stated, that as there was no unanimity between the opinions of the three Assessors and himself, he could not give any verdict, and in that case the matter would, in accordance with H. M.'s Order in Council, be referred to the Minister at Yedo, and Mr. Moss would be given due notice of the decision.

*Dec. 20th, 1860.*

The Court having previously sent me notice, met this morning, and the sentence of Mr. Alcock was passed; after which I was given over to the hands of an officer, Lieut. John R. Moss of the "Pioneer," under a guard of marines, and the case in the Consulate Court was ended.

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## NO. VII.

### MY DEFENCE.

MR. CONSUL, AND ASSESSORS—GENTLEMEN,

Ere placing before you those portions of the evidence which will, I trust, convince you of the truth of all my statements, I wish to point out an irregularity that has happened, and of which at the time of its occurrence I was aware; but although thereby at once placed in a false position, I did not protest against it, or place any obstacles in its way.

I allude to the fact that no charge of any description was laid against me by the Japanese, as is proved by the very questions of this Court during the proceedings of the case, and that up to the moment of coming into the Court of Inquiry, where I was in the position of a prisoner, I was ignorant, as was the whole Court also, of what was to be stated against me, and who was going to state it.

After recovering sufficiently from the treatment I had received at the hands of the Japanese Government, to put pen to paper, I placed in the hands of my Counsel a statement under oath of my doings from the time I left Yokuhama till released, or I should more properly say *rescued* from the Japanese, and laid a charge against them, as per my letter of the 30th November. (This I read to the Court.)

These were handed by my Counsel to the Minister, who returned them next day without any comment, or notice, and by the very fact of doing so, at once implied a disbelief of their truth and a contempt for my plaint. A line of conduct which not only is without precedent in our home legal constitution, but directly opposed to its law, as also to the sense of equity or justice.

By the Minister's contemptuous treatment of my sworn statement, and the serious charge I brought against the Japanese Government, I was, I contend, deprived most illegally and despotically of my right as a British subject to avail myself of that country's laws, one of the clearest objects of them being not alone to protect the life and interests of the subject, but to *aid* that subject in punishing his injurer and assisting him in recovering compensation for injuries and loss sustained.

My charge against the Japanese was not heeded, and instead of appearing in this Court as a plaintiff, I stood there a prisoner, and as a *mauvais sujet* was deprived of my liberty.

The very fact of this Court having allowed the Japanese to appear, and make a charge against me, after having received my statement and plaint against them, being an injustice to me legally and morally, for my charge was thereby passed by and my statement under oath discredited.

In alluding to this I do not wish to leave an impression on the mind of this Court, that I entertained any feelings hostile or opposed to its direction, but to show that whilst alive to the fact that I was not legally detained and dealt with, I had respect for its decrees, and feeling confidence in its fairness and in its wish to promote the cause of justice, though I saw it deviating widely from the beaten tract of legal custom, I aided all in my power to help it in arriving at that end, showing thereby my own desire for a thorough and close investigation.

Therefore, although I am placed here a prisoner on my defence, I should rather be considered as a plaintiff summing up the proofs of his charge, than as a defendant, and it is with this knowledge, and in this light I now take up the evidence in the case.

With your permission, I will first read the plaint of the Japanese Government, and having done so will call over the names

of those witnesses whose depositions have been received as evidence. I will then point out a few of the contradictions and falsehoods that appear, proving each Japanese witness perjured, and showing that his depositions should not be received against my statement.

*Names of Witnesses.*

Ukarwar Kosy mon.

Seto Kinsymon.

Ikarwar Sogoro.

Magotaro and Hosokurar Kinsymon.

I then read portions of their depositions, and after clearly proving the contradictions and falsehoods of the Japanese witnesses and their perjury, I touched on the following various reasons and causes that would have made it very improbable to the minds of any conscientious and well thinking men, for me to have acted as charged in the indictment, or as tried to be shown by the fabrications and plan of the Japanese prosecution.

1st. The contradictions and falsehood of their statement proved.

2nd. My charge against the Japanese laid before theirs—yet theirs preferred.

3rd. They should have been made to disprove my charge, being alone it was placing me at a terrible disadvantage.

4th. The madness of shooting a man in the public streets, surrounded as I was by armed men, and knowing my life would have been the immediate forfeit.

5th. What good could it have done me, nothing to gain or to my advantage, but everything to lose by such an act—*cui bono*?

6th. The law of Japan about shooting, *not proved*, not shown really to exist except by hearsay—not even known to their own witnesses.

7th. My respect shown to the Consular Notification of the previous year, by the length of time which passed ere I went out again after reading it, that autumn, winter, spring and summer, and half the next season for shooting had elapsed.

8th. That it then had become a habit and acknowledged custom, by parties of Foreigners going out shooting constantly daily, English, French, Americans, and others, that no Consular edict, no direct prohibition, or notice of such goings out, throwing

any obstacle or disfavour on it, or even disapproving of it, had been issued or expressed—that the custom was acknowledged,—it was openly done, and that the privilege by their non-interference course, was understood to be granted and to exist; that the Japanese had never on any occasion of Foreigners shooting within the limits, interfered with them, but that they had met with kind treatment and assistance in the pursuit of this amusement.

9th. My perfect obedience and wish to be guided by, and follow, the notifications and decrees of the Consul.

10th. The pleasant frame of mind I was in returning homewards, with the prospect of enjoying the comforts of a bath, of fresh clothes, &c., the pleasure of meeting my friends at dinner, and spending a cheerful evening, &c.

11th. The state of body at the time, my condition not likely to arouse pugnacious propensity in my thoughts, fatigued and tired from two days exercise, and the short time I allowed myself for sleep the previous night.

12th. No warrant produced, no questions put to me, no authority shown whatever, for the explanation of their proceedings.

13th. My warnings of the danger of my weapon, my expostulations and cautions unheeded, the determination shown on their part to seize my person.

14th. Nothing to show they were Government officers or policemen by distinguishing badge or mark; even when using the Government garb as police it is so trifling in its distinction that it is obscure to their own witnesses and people.

15th. The great confusion and pressure around me by the presence of so large a body of armed men.

16th. Distrust of their object and belief of my imminent danger, but natural and reasonable—after my knowledge of their capabilities and the atrocities they had already committed. After the murders of the Russians, after the poor Dutchmen I had seen butchered, and Messrs. Dent and Co.'s Chinaman, and the assassinations, or attempted assassinations of others; Mr. Alcock's servant, and M. De Bellecourt's.

17th. Self-preservation and protection, the first thought of any man.

18th. The Interpreter "Shuoyar," close at hand, could have been brought up, if they really wished to arrest me, for having shot game.

19th. The absurdity of their producing and approaching and surrounding me with so large a body of armed men, merely for the purpose of asking me my name. Might have got it from their register of servants. Might have taken many other means of bringing the charge against me, and could have easily proved my having been out for the purpose of shooting game.

20th. My detention—when the Consul was in the very house in which they held me, denying the fact, and refusing me to him.

21st. The secrecy and cunning in dealing with, and moving me about from place to place.

22nd. The brutal usage I was subjected to.

23rd. The direct opposition to and breach of Treaty stipulations.

24th. The danger of allowing such a precedent.

25th. The danger we all run therefrom.

26th. The terrible anxiety during the twelve hours of my detention and despair, when I saw through their treachery.

27th. The vengeance of the Japanese—well known to be a fixed custom.

28th. The wounded man's depositions—his vengeance bequeathed to his three brothers.

29th. My own conviction that had I not been rescued that night, another day would have never passed, without death to myself at their hands.

30th. Damage to my unprotected property and interests at Yokuhama—loss of opportunities and destruction to my business likely to follow.

31st. The state of health I had been in, in consequence of the treatment I had undergone; although recovering fast, from the soundness of my constitution, still impossible to say what results I may or may not hereafter feel from their brutality.

32nd. The straightforwardness of my whole plan and proceedings, the justice of my claim, and my wish to rest every thing on its own merits, and only seek for truth. My not wishing to bring in any legal difficulties, that I had not employed Mr. Cooper Turner to conduct the defence, no legal technicalities, or errors wanted to prove my case, or the innocence of my actions.

## No. VIII.

*British Consulate, Kanagawa, Dec. 19th, 1860.*

SIR,—I have the honour to inform you that to-morrow, the 20th inst., at 10 o'clock A.M., I shall be prepared to give the Verdict and the Judgment in the case of "the Queen *versus* Michael Moss."

I have the honour to be, Sir,

Your most obedient humble servant,

F. HOWARD VYSE,

*H.B.M.'s Acting Consul at Kanagawa.*

To MICHAEL MOSS, Esq., Yokuhama.

## No. IX.

## COPY OF THE MINISTER'S VERDICT IN QUEEN V. MOSS.

In the cause of the Queen v. Moss referred to H.M.'s Envoy Extraordinary and Consul-General in Japan, in consequence of the recorded dissent of the Assessors to the judgment of the Consul.

The indictment charges the prisoner Michael Moss with a breach of the law under three counts.

1st—That he went out shooting contrary to the laws of Japan.

2nd—That on the same day he assaulted and wounded Otāmi Koonitaro, an officer of the Tycoon, in execution of his duty, obstructing the said officer and divers others in the apprehension of the prisoner.

3rd—That he did further feloniously with a certain gun shoot at and against the said officer, with intent to do him some grievous bodily harm, unlawfully, maliciously inflicting a dangerous wound, the better to resist and prevent the lawful apprehension of the said prisoner, contrary to the Statute in such case made and provided, and against the peace of our Lady the Queen, her Crown and dignity.

Looking to the evidence for the prosecution entirely resting upon the asseveration of Japanese witnesses, and making every allowance for possible collusion or untruthfulness, it seems proved sufficiently that the prisoner, on the day cited, had actually been



shooting in the country, that his servant with the game he had shot with his gun were behind him, a policeman having reported that he saw him shoot the bird. That he did obstruct the officer cited and several others in the execution of their duty, and did further assault and dangerously wound Otami Koonitaro. So far as the witnesses are worthy of credit, he fired his gun with intent to do him some bodily harm, and, in the terms of the indictment, unlawfully and maliciously to inflict a dangerous wound, the better to resist his lawful apprehension.

These, assuming them to have been satisfactorily proved, are all offences, misdemeanors, or crimes, rendering the person committing them liable to punishment if done within the part of Her Majesty's dominions called England, and which would, by a Court of Justice having criminal jurisdiction in England, have been deemed and taken to be a crime, misdemeanor, or offence, rendering the person so committing them liable to punishment.

It is an offence against the statute law of England to go out shooting without a Government license, and the penalty is a fine of £20. with the addition of the full duty of the certificate, £3. 13s. 6d. It is a further offence to trespass, by shooting over any one's land without permission, entailing penalties.

It is an offence of a much graver character to assault and strike or wound any magistrate, *officer*, or other *person* lawfully authorized, when discharging his duty, one which subjects the offender to transportation for several years, or to imprisonment with or without hard labour for such term as the Court shall award. And by the 25th section of Geo. 4th, c. 31, persons convicted of any assault upon a peace or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer, or of any assault upon any person with intent to prevent the lawful apprehension of the party so assaulting, or any other liable by law to be apprehended (when such offences are regarded only as misdemeanors), may be imprisoned for any period not exceeding two years, and also fined. For an aggravated assault the 14th and 15th Vic. c. 19, § 4, enacts that if any person maliciously inflict upon another, either with or without any weapon or instrument, any grievous bodily harm, or maliciously wound, he is liable to be imprisoned for any term not above three years. This is the law of England for such offences, applicable to British subjects

convicted of their commission in the Empire of Japan, as in any part of Her Majesty's Dominion, as distinctly provided in the Queen's Order in Council of the 23rd January, 1860.

The prisoner, however, pleads not guilty, and in his defence impugns the veracity and credibility of the witnesses against him, denies that he violated any Japanese law, contrary to the express warning and prohibition made public by a Consular notification, which he read as only conveying a request he was at liberty to disregard, for so he acted; but does not deny that he resisted and threatened the officers who apprehended him, contending that he was justified in such resistance. The prisoner complains that he has been denied the full benefit of the law of England, and particularly demurs to the affidavit transmitted to the British Minister, the day after the event, having been returned to him without comment. Were it necessary to bring forward any evidence to refute the charge, it would be sufficient to refer to the affidavit in question, which was returned to the prisoner by the Consul, with a *recommendation to withdraw it*; no more merciful consideration could have been shown the prisoner, for by this sworn declaration, which he persisted in producing as his defence in the trial, he stands *self-convicted*—no evidence whatever is required from the prosecution to produce conviction on every count of the indictment. He makes oath that he did, on the day in question, go out shooting, and shot the bird he was bringing home when arrested; that on seeing the officers approach his servant he turned back, took his gun from him, *cocked it* and *pointed it* menacingly at the officers, both by word and gesture, threatening not only to resist but to shoot any one advancing. He leaves one point for the prosecution to prove, that he actually pulled the trigger. More than one witness swore positively to the fact. Let the prisoner have all the benefit of the doubt, if doubt there be—what does it amount to? In law, he who in the commission of an unlawful act causes, intentionally or otherwise, loss of life or serious injury, is responsible for all the consequences that may ensue. Even if the act itself be lawful, as the prisoner contends his act of resistance was, yet if it be done in an unlawful manner, or without due caution or circumspection, he is still responsible. Will any one contend that it was lawfully done, or with due circumspection and caution, to cock a loaded gun and point it at

men closely approaching him? Even as to the absence of malicious intent, is this reconcileable with the act of cocking and pointing the gun, and the language of direct menace and abuse the prisoner himself declares he employed?

Taking all these facts and the whole evidence into consideration, the prisoner stands clearly convicted by his own evidence, apart from any brought forward by the prosecution, of all three counts in the indictment, and the only question appears to be the amount of punishment. The Consul has sentenced him to a fine of \$1000 and deportation. This seems a very inadequate penalty for such grave offences, looking to the penalties specified by statutes just cited, varying from seven years of transportation to two years imprisonment, with or without hard labour. Even assuming that the wounded man should not die, he is certainly maimed for life.

And how came this about. Because in the first place, the accused, in utter disregard of all warning and prohibition from his own authorities, and in defiance of the territorial rights of the Japanese, determined to have his sport, and when in danger of being arrested, preferred risking, or taking an officer's life, to accepting the legal consequences of his first unlawful act. Nevertheless the Assessors have each, though for diverse reasons, recorded their dissent, only generally agreeing that the *penalty is too severe*. There must be some strange misapprehension, either of the facts or the law, to explain the opinions I find recorded in these minutes, and as nothing can be more fatal to the security and well-being of the community at the Port than the prevalence of grave error in what concerns either the law or its obligations, those recorded opinions demand careful examination.

It is obvious by the tenor of all these Minutes that none of the Assessors were cognizant of the exact nature or limits of their functions as Assessors, under the Queen's Order in Council, though very distinctly laid down in section XX, wherein it is declared that they "shall have no authority to decide on the innocence or guilt of the party accused, or on the amount of punishment to be awarded to him on conviction, but in the event of the said Assessors, or any of them, dissenting from the said conviction of, or from the amount of punishment awarded to, the accused party, the said Assessors, or any of them, shall be authorized to record

in the Minutes of the proceedings, the grounds on which the said Assessors or any of them may so dissent."

The Assessors, nevertheless, each pronounced and decided on the innocence or guilt of the party accused, as well as "the amount of punishment awarded," in direct contravention of the law laid down for their guidance. The least that can be expected of Assessors is that they should inform themselves before undertaking the responsible office to which they are called, of what its duties consist. If they do not know this much, it can hardly be matter of surprise that they should fail in knowledge less easily acquired, as to the laws generally.

What are the grounds of dissent? Edward Clarke dissents because, although he was satisfied by the evidence that the accused had broken the law against shooting game, he was ignorant of such laws being in force. That although he did resist the officers of the Tycoon, he was ignorant that they were officers of justice; and lastly, that the accused did not discharge the shot which wounded the officers.

It is to be observed first, that presuming all these premises to be true and founded on the evidence, neither the ignorance of the accused, nor the non-discharge of the gun by the same hand which had cocked and menaced the lives of the officers with it, in any degree affect his legal liability for these acts and all the consequences. The most that could be said is, that if well established, they might in some degree tend, in the discretion of the Judge, to mitigate the extreme penalty which would otherwise be inflicted.

But how can it be held that the accused was ignorant of a law which had been publicly notified to the Community, with a Consular prohibition against its violation, which notification was produced in Court with the signature of the prisoner attached.

Is it necessary in the second place to inform the Assessors, that any one may be arrested in the commission of an offence for which he is legally punishable, and if he resist, in ignorance, real or feigned, that it is an officer of Justice, he does so at his risk and peril, and is punishable for so doing.

But the very fact that the accused was in the first instance asked his name, (which was sworn to and does not appear to have been denied,) should have been sufficient indication that he

had Tycoon's Officers to deal with. Why should he have hesitated to give it, and accept the responsibility of his acts without further difficulty, or above all, without involving much more serious responsibility? This is the law in England, but it has been shown to be the opinion of some of the British witnesses that they are not liable to arrest by any Japanese authority, or at all events, without a warrant of the Consul, and possibly to the general prevalence of this grievous error is in part to be attributed the unhappy results in the present case. One witness, indeed, ventures to say, even after what has passed, *that he would do the same*. I trust the result of this trial will effectually deter him and all who think like him, if there be any more in the community. The avowed existence of such opinions as to what may be justifiably done, imposes an obligation on the Judge, in such a case as this, to mark his reprobation of such principles. It is important therefore that it should be known by every one, that whoever offends against the law may be arrested in the act and taken before the Consul. It is impossible to deny this right to the territorial Authorities, without at the same time denying all justice to Japanese, for only by arrest at the time, in the great majority of cases, can the identification of the party offending be ensured or conclusive evidence against him obtained. In this case of shooting, after appealing to all the Consuls to prohibit it, after seeking repeatedly to obtain the names of the parties offending, and having been deterred by Foreigners pointing their guns at them and threatening to shoot them, as did the accused, they finally determined it seems no longer to be set at defiance, and took measures to make sure of the next offender. Still they declare they asked and only wanted his name, and had the accused given it he would at least have taken the first and the most obvious of the lawful means for averting his arrest; but, it seems to have much more naturally suggested itself to him, to cock his gun and menace the officers with death.

John B. Ross dissents from the sentence, holding the accused guiltless of all the charges, because the latter saw others equally offending, and not knowing the officers, that his act of cocking and pointing his piece was *natural* and *no breach of laws*; and finally, that the defence of the prisoner was so plain and straightforward as to satisfy him of his innocence of all the charges. It is both startling and painful to

read such declarations. What! is it no breach of laws to point or fire a loaded gun in a crowded street, and at men who, whatever their intentions, showed no disposition to draw or use their arms? The prisoner's defence, which convinces the Assessors of the prisoner's innocence, it has been already observed, more than suffices to prove all the charges. Further comment on such grounds of dissent as these seems unnecessary, and those noted by A. Macpherson are nearly identical, the same observation therefore applies to them. If such grounds of acquittal as these are to be accepted in British Courts, when parties are accused upon the clearest Evidence, of committing offences of the gravest nature, not only contrary to Japanese law, but their own laws; the Japanese Government might justly complain they could obtain no redress, and the conviction and experience of such fact, would, I am convinced, at no distant period render the residence of Foreigners in the Japanese territory, in either peace or security, impossible. To maintain respect for the laws of the country generally, but more especially for those, the violation of which constitutes punishable offences in the British Dominions, is the imperative duty of those British Authorities to whom the administration of Justice has been entrusted, and the conscientious and fearless discharge of this duty is no less the first condition of security to all.

For these reasons, and being fully satisfied of the guilt of the accused, on all three counts of indictment, and the absence of all valid grounds of dissent as recorded by the Assessors, I hereby confirm the sentence of a penalty of \$1000, (One thousand dollars,) in so far as the amount is concerned, but award it to be paid to the wounded man, Otami Koonitaro, as an indemnity for the grievous injury he has received; and further considering the gravity of the offence, and the reckless manner in which the prisoner cocked and pointed a loaded gun, under circumstances affording no justification, I hereby, in virtue of the powers conferred on me by the Queen's Order in Council, to confirm or vary the punishment awarded by the Consul, when such award is referred by reason of dissent of Assessors, do sentence the said Michael Moss to three months imprisonment, in Her Majesty's Gaol at Hong-Kong, and further confirm the sentence of deportation.

Given under my hand and seal this eighteenth day of December, one thousand eight hundred and sixty, at Her Majesty's Legation and Consulate General, Yedo.

(Signed), RUTHERFORD ALCOCK,  
*H.B.M.'s Envoy Extraordinary and Consul-General in Japan.*

### No. X.

*British Consulate, Kanagawa, Dec. 22nd, 1860.*

SIR,—I have the honour to inform you that it is not usual to pay any fine imposed in a Criminal Case, under protest.

I have the honour to be, Sir,

Your most obedient humble Servant,  
 (Signed) F. HOWARD VYSE,  
*H. B. M.'s Acting Consul at Kanagawa.*

To MICHAEL MOSS, Esq.,  
*Yokuhama.*

### No. XI.

*Copy of the Letter addressed to the English Minister by Messrs. John B. Ross and A. J. Macpherson, in consequence of Mr. Alcock's censure on their conduct as Assessors, in dissenting from the Consul's verdict in the case of the Queen v. Moss.*

*Yokuhama, 7th January, 1861.*

YOUR EXCELLENCY,—In your decision in the case of “the Queen v. Moss,” referred to you, in consequence of the recorded dissent of the Assessors to the judgment of the Consul, you animadvert upon our conduct as Assessors in a manner which calls for a reply.

Your Excellency states that it is obvious that we were not cognizant of the exact nature or limits of our functions as Assessors, and that the least that can be expected of Assessors is, that they should inform themselves, before undertaking the responsible office to which they are called, of what its duties consist.

In reply to these remarks we have only to say, that we undertook the office of Assessors not as a matter of choice but of duty,

and under the idea that we were to be guided in our decision by what we considered just, and not by a knowledge of Law, to which we make no pretensions. We heard and gave our closest attention to the evidence, to the defence of the prisoner, to the summing up of the Judge; and, after the most careful consideration, we found we could decide in no other way than by a dissent from the Consul.

We found the prisoner not guilty; but we neither did nor could decide, as your Excellency affirms, upon the amount of punishment to be awarded, and it was only at the express desire of the Consul, who returned one of our Minutes on account of the omission, being pronounced on his innocence or guilt.

If, therefore, we are irregular, the irregularity rests with him.

Your Excellency says, that we hold the accused guiltless because he saw others equally offending. We cannot allow that the accused did offend by going out shooting, as the Consular notification of 1859, which your Excellency construes into a prohibition, and attaches so much importance to, contained merely a request to abstain from shooting while the question was in abeyance.

This notification the prisoner observed until numbers of H. B. M.'s and other Consulates, who, it was natural to suppose, would be the last to break what they deemed a law, had repeatedly been out shooting; and we are confirmed in this belief by the fact of the Secretary to your Excellency's Legation at Yedo having come down to Kanagawa, with your Excellency's consent, for the purpose of shooting, on the very day on which Mr. Moss was seized.

Regarding the prisoner's liability to arrest, your Excellency states, that whoever offends against the law may be arrested in the act, and taken before the Consul. This, however, was not done in this instance. Mr. Moss having been seized while quietly walking along a public street, and considering that shooting was an amusement in which so many of the foreign community almost daily participated, and that in going to and returning from the shooting grounds they passed through Kanagawa and Yokuhama without ever having been molested in any way, he might well be at a loss to imagine why or by whom he was followed.

It is asserted that the sole object of the pursuers was to ascertain the name of the prisoner,—a statement we totally dis-



believe, not simply because some of the witnesses who were present denied having heard any such question, but from its being highly improbable that the officer who is said to have made the inquiry knew so much and no more English. Granting, however, such to have been their object, one officer would have been sufficient, and we think any man would naturally stand on the defensive on finding himself pursued by a number of men, particularly any man acquainted with the occurrences at this port during the last eighteen months.

In so far as your Excellency states that the prisoner's own statement convicts him, we maintain that it strengthens our opinions that it was a plain and straightforward one. He admits that he cocked and pointed the gun, an admission which your Excellency receives as a sufficient proof of his evil intent. This he declared was done with the object of intimidating and keeping off his pursuers, as he had no intention to shoot, well knowing that the gun once discharged he would be helpless, with no other effect than outraging his opponents; and he further solemnly declared that the gun went off after it had been wrested out of his hand.

This we conceive to be the real state of the case; and no arguments of your Excellency, after the evidence of such perjured witnesses as we listened to, can shake in the very least degree our belief in its truth. Your Excellency is doubtless aware that one of the witnesses, upon whose evidence the charge of wounding was principally founded, was publicly cautioned by the Consul, in the middle of his examination, and told that his answers would probably form the subject of inquiry at Yedo.

The Consul having informed us that copies of all documents connected with this case would be forwarded to the Secretary of State for Foreign Affairs, we have to request that your Excellency will cause one of this letter to accompany that of your animadversions upon us.

We have the honour to remain,

Your Excellency's most obedient humble servants,

(Signed) JOHN B. ROSS,

(Signed) A. J. MACPHERSON,

To His Excellency RUTHERFORD ALCOCK,  
*H. B. M.'s Envoy Extraordinary and  
Consul-General in Japan.*

## No. XII.

*Monday Evening, H.M.S. "Pioneer, 24th Dec. 1860.*

SIR,—Having this day been informed from the English Consulate that I have the option of going up to Yedo in this vessel, the day after the morrow, or staying in this Port, I have the honor to request that you will have the kindness to make such arrangements as may be needful for my stay, which will enable me to settle my business arrangements with as little loss as possible.

Might I, at the same time, request that the warrant for my imprisonment be shown me.

I have the honor to be, Sir,

Your obedient servant,

MICHAEL MOSS.

CAPT. H. A. REILLY, H.M.S. "Pioneer."

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## No. XIII.

*H.M.S. "Pioneer," Yokuhama, 24th Dec. 1860.*

SIR,—In reply to your letter of this date, I have to inform you that, as a prisoner under a warrant, of which the enclosed is a copy, it is neither in the power of H.M. Consul to offer, or you to accept, the option referred to.

When I have received Rear-Admiral Jones' instructions as to your disposal, they shall be duly communicated to you.

I am, Sir,

Your obedient servant,

(Signed) H. A. REILLY, Commander.

To MR. MICHAEL MOSS, H.M.S. "Pioneer."

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IN THE CAUSE OF THE QUEEN v. MOSS.

*At Her Britannic Majesty's Consulate at Kanagawa, this  
20th day of December, 1860.*

To PHILIP BUCHANAN WALSH.

WHEREAS in this cause it was proved that the defendant, on the 27th day of November last, unlawfully did assault, obstruct, and grievously wound *O-yah-koo-ni-tha-ro*, a Tycoon's officer, while in the execution of his duty, and it was adjudged by Her Britannic Majesty's Consul that the defendant should pay a fine of \$1000, and be *deported*; and

The said Judgment having, upon dissent of the Assessors, been referred to Her Majesty's Envoy and Consul-General in Yedo, and the said Consul-General was pleased to direct and adjudge a *further* penalty of *three months'* imprisonment to the Defendant in Her Majesty's Gaol at Hong-Kong:

This is, therefore, to command you, Philip Buchanan Walsh, to take the defendant on board Her Majesty's ship "*Pioneer*," Commander Reilly, now in this harbour of Kanagawa, and there deliver him to the said Commander, together with this warrant; and I hereby require you, the said Commander, in accordance with the provisions of the Queen's Order in Council, dated January 23rd, 1860, sections xxi. and xxii, to receive the defendant into your custody, and there to keep him until opportunity occur for sending him to Hong-Kong, there to undergo his term of imprisonment.

Given under my hand and seal at the time and  
place first above written.

(Signed) F. HOWARD VYSE,  
*Her Majesty's Acting Consul at Kanagawa.*

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## No. XIV.

*British Legation, Yedo, Dec. 30th, 1860.*

SIR,—I have the honor to inform you, by order of H.B.M.'s Envoy Extraordinary and Minister Plenipotentiary in Japan, that Thursday next, the 3rd inst., is the day fixed for your departure in one of H.M.'s ships for Hong-Kong, and he also desires me to say that he trusts your affairs have been already settled, and if

not, that you will take the earliest steps of making the necessary arrangements for that purpose.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed)

F. HOWARD VYSE,

*H.B.M.'s Act.-Consul at Kanagawa.*

To MICHAEL MOSS, Esq.

*H.M.S. "Pioneer," Yeddo Bay.*

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No. XV.

*H. M. S. "Pioneer," Yedo Bay, 31st Dec., 1860.*

SIR,—I beg to acknowledge your communication of yesterday, informing me, that by orders of H. B. M.'s Envoy Extraordinary and Minister Plenipotentiary, I am to be deported from Japan on the 3rd Proximo, in one of H. B. M.'s ships to Hong-Kong.

I note that his Excellency trusts my commercial affairs are settled, and if not, that I will make the necessary arrangements for that purpose. I have the honor to request you will convey to his Excellency my thanks for his consideration;—that, in consequence of a message sent me through Mr. Blekmann by yourself, leading me to understand that I should have remained at Yokuhama, I have made no provision for winding up my business, indeed, under the belief that I should have been permitted to go ashore the day following, I did not even bring on board with me a change of linen. Having carried on my business in Yokuhama alone, and unassisted, I am unable whilst in this Bay to take any steps towards bringing it to a conclusion.

In consequence of Mr. Blekmann's message, I addressed a letter to Capt. Reilly of the above vessel, copy of which and its reply I beg to enclose.

In conclusion, I beg to place before you the short period that will be at my disposal ere leaving Japan, which will seriously increase the heavy loss I must sustain.

I have the honor to be, Sir,

Your obedient servant,

MICHAEL MOSS.

To CAPT. F. HOWARD VYSE,  
*H. B. M.'s Consul at Kanagawa.*

## No. XVI.

*British Legation, Yedo, December 31st, 1860.*

SIR,—I have the honor to acknowledge the receipt of your letter of this day's date, and regret extremely that you should have been misled by any assertion of Mr. Blekmann's, which I can assure you he has made use of entirely on his own responsibility, and without my knowledge or authority.

I have the honor to be, Sir,

Your most obedient humble servant,

(Signed) F. HOWARD VYSE,

*H. B. M.'s Acting Consul at Kanagawa.*

TO MICHAEL MOSS, Esq.,  
*H. M. S. "Pioneer," Yedo Bay.*

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## No. XVII.

*H. M. S. "Pioneer," Yokuhama Bay, 1st Jan. 1861.*

SIR,—Having learnt that several persons on board the "Imperieuse" have been attacked, and are on the sick list with small-pox, I hereby protest against my being sent on that ship.

Should I be placed there, and unfortunately fall a victim to that disease, I hereby notify that the Authorities ordering my transfer will be held responsible.

I have the honor to be, Sir,

Your obedient servant,

MICHAEL MOSS.

TO CAPT. F. HOWARD VYSE,  
*H. B. M.'s Consul, Kanagawa.*

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## No. XVIII.

*Yokuhama, 25th January, 1861.*

DEAR SIR,—We the undersigned residents at Yokuhama, feel it our duty to express to you in writing (what, however, you are already well aware of), our strong sympathy with the unfortunate position in which you have been so unjustly placed.

We use the word unjustly advisedly, in the full conviction of your innocence of the charges which were brought against you,

at the same time we are far from imputing to H.B.M.'s Consul and Minister, an intentional injustice, or that they gave a verdict contrary to their conviction of what was really the case.

We feel ourselves bound, therefore, to state the grounds on which we impugn the correctness of their judgment.

You were accused in the first place of having violated the Laws of Japan, in going out shooting. The fact was not denied; nay, was admitted by yourself in your defence; it remains therefore only to consider whether this could be made out to be an offence at all, and therefore punishable.

It was not proved to the satisfaction of the three Assessors, who were summoned to assist the Consul in this case, that such a Law exists at all. On the contrary, the evidence strongly impressed them with the idea that no such enactment has till very recently ever been heard of, even by those officers most cognizant of the Laws.

Some traditionary rule there certainly appears to be, as to shooting—that is, there are some restrictions as to distance from Yedo, but even on this point the Officers did not agree.

Supposing, however, such a Law to be in force in Japan, can it for a moment be supposed that any of their arbitrary enactments are binding on Foreigners, and the infraction of them punishable, without the slightest notice being given to them by the native authorities of their existence, and by the Foreign Officials for the necessity for their observance?

How does the Law stand on this point?—In the Queen's Order in Council of the 23rd January, 1860, it is distinctly laid down, that no act done by a British subject in Japan, provided it be not against the Treaty stipulations as to Trade, can be taken to be a crime, misdemeanor or offence, which if done in England would not be punishable by Law. But the power is given to H.M.'s Consuls, with the approval of the Envoy Extraordinary, to make rules for guidance of H.M.'s subjects in Japan, and the peace and good order of the settlement.

Was the act of which you have been convicted, First, one which in England would be punishable by Law; or Secondly, was it

against Consular Notifications, issued and made binding according to the terms of H.M.'s Order-in-Council?

With regard to the Law of England, H.M.'s Envoy has certainly stated in his judgment, that the act of shooting (which it was proved that you committed) *was* punishable in England, under a certain Act of Parliament, which he specifies. We are unable to refer to this Act at present, and must therefore only attribute to our ignorance, the fact that the existence of such a Law is generally doubted here. If such there be, it must have been one of those recent enactments, which our absence in the East, (and general indifference as to shooting at home) has caused us to overlook. We have, many of us, been formerly in the habit of shooting in England, and though well aware that in that country the unlicensed killing of *game* is, for very peculiar reasons forbidden, we had never till now heard it propounded that the killing of a wild goose on common land was a legal misdemeanor.

But his Excellency also declares trespassing is against the Law of England. Now it is to be remarked that this word trespassing is heard for the first time during the case, from H.M.'s Plenipotentiary; who, thinking perhaps to strengthen his judgment, invents a charge against you, never dreamed of by the Japanese, and never brought forward, much less proved at the trial. He is, or ought to be well aware, that in shooting you were not a trespasser, certainly not necessarily so, and that our daily walks, take us over precisely the same ground, as that you and others formerly shot over, which is uncultivated and wooded country with public paths in all directions.

With regard to the Second Question, it is indeed alleged that shooting was forbidden by the British authorities, that Consular Notifications prohibiting the sport had been published, and that those engaging in it acted in defiance of such rules, and committed thereby a deliberate violation of the Law.

Let us consider how the case really stands, and whether the Foreign or Native Officials had given cause to understand that shooting was illegal.

A certain circular bearing your signature as having seen it was produced in Court, to carry out this assertion. What, however, did this circular amount to? To a request to the few English then resident here, to desist from shooting for a time while the question was in abeyance. The Notification or request was never published, was never affixed in the Consular Office, as desired in H.M.'s Order in Council; and could therefore in no way aspire to be considered as a rule carrying with it punishment, as a consequence of its infraction.

But, independently of this, we maintain, that you and every one here, had a right to assume from the conduct of our Officials, that the question could no longer be in abeyance.

It has been asserted that your arrest was in consequence of the difficulty of identifying offenders, and after reiterated complaints had been made to the Consul, without his being able to trace the delinquents. We are well aware, on the contrary, that the *name and residence of every person, who went out to shoot, were not only perfectly well known to the Japanese Officers, but that there were cases where such persons were reported by name to the Consul, and no word of disapproval, no sentence of warning even was ever called forth.*

Why, if this sport were so obviously illegal, were these reiterated complaints disregarded? and why were the persons, who were very well known to the Consul not at least cautioned?

*It is a significant fact also, that this deliberate violation of the law, as it is now called, was constantly committed by Consular Officials, with the Consul's full knowledge and concurrence, and that the Secretary of the British Legation came down from Yedo, on the very day you were taken, with the intention of shooting over this country, and that with the knowledge and approval of H.M.'s Envoy Extraordinary.*

It must also be remembered that numbers of this community were in the habit daily of shooting; and that no remonstrance was made to them by the Japanese Officers; and that some have been out for days, with Officers and Interpreters sent to watch them, who, far from endeavouring to put an end to their sport, treated them with attention and civility, and, in some cases, even



provided them with quarters for the night. Yet they never complained of the shooting ; and though the names of the sportsmen were well known to the Japanese accompanying them, the subject was never afterwards mentioned.

For these reasons we say, then, that you, and all the British residents here, had a right to assume, as they did, that the question was no longer in abeyance,—that no objection was raised by the Japanese, or, if any, the foreign officials considered it unworthy of notice.

With regard to the first count, then, we conceive that it was not proved that any law against shooting exists in Japan, and, if it exist, no sufficient measures had been taken, either by the Japanese or British authorities, to render it legally binding.

As to the law of England, it can hardly be pretended that there is any enactment against shooting altogether, or that killing a wild goose in common open country is a punishable offence.

If this first count fall to the ground, the second, namely, assaulting and resisting officers in the execution of their duty, cannot for a moment be sustained ; in fact, it converts the attempt to arrest you into an unprovoked and lawless attack, and one against which it was your right to defend yourself by every means in your power.

With reference to the third charge, that of maliciously wounding an officer of the Tycoon, it is evident that, if the arrest were unlawful, you were justified in going any length in warding off the illegal assault of a body of armed ruffians, who attacked you in the public streets of Kanagawa ; and if even had a shot from your hands killed or wounded one or more of your assailants, it could only be termed a perfectly justifiable act of self-defence.

But we wish to record our solemn and decided conviction, founded on the evidence adduced at your trial, that the shot was fired, not by you, but through the ignorance and carelessness of one of the Japanese officers. The evidence on this point was, as every one of the hearers, except the Consul, was fully persuaded, most unsatisfactory, prevaricating, and contradictory. The principal witness against you, the officer who commanded the party who attacked you, was himself publicly reprimanded in the open

Court by the Consul for his repeated prevarications, and was informed that his conduct might probably form the subject of an enquiry at Yedo; and the whole of the testimony against you was of a character to convince the Assessors, and the whole of the hearers, of your complete innocence. But H. M.'s Envoy declares in his judgment that your own statement was of itself sufficient to convict you; he therefore accepts a portion of your sworn declaration as important evidence, but rejects as false all the exculpatory part, admitting only the passages tending to incriminate you. This we cannot but conceive to be unjust; and we wish to express our own firm belief in the straightforwardness and truth of your statement.

We are convinced from circumstances which had previously taken place, and the feelings shared in by the whole community, which cannot perhaps be entered into by persons distant from hence, and which may even be considered mistaken and reprehensible, that had you in your own defence shot the man you would not have concealed the fact; and would have considered that you were justified in so doing.

However erroneous this feeling may be, the knowledge of its existence strengthens and confirms us in our belief of the entire truth of your account of the transaction.

The only important circumstance bearing on the case we have to mention, apart from the evidence, is, that persons here well acquainted with the Japanese language, have been informed by the Japanese shop-keepers, eye-witnesses of the occurrence, that the gun was in the hands of a Japanese officer when it went off.

Most unfortunately such is the despotism of this country, that no means could induce the persons to come forward to give evidence against their officials, and even when again questioned they are afraid to repeat the truth.

Taking all these circumstances into consideration, we can come to no other conclusion than that arrived at by the three Assessors, who were called on to assist the Consul, who, after a careful and dispassionate hearing and examination of the evidence adduced, declared their conviction of your innocence.

Had they formed part of a jury sworn to try the cause, they would, as would all the hearers of the case, have acquitted you. Unfortunately the verdict of the Consul, supported by H. M.'s Envoy, has overruled all their protests; but we still repeat that we strongly concur in their dissent.

In conclusion, as perhaps the greatest mark we can give of our sympathy with you in your misfortune—certainly the strongest proof of our firm belief in your innocence—we have great pleasure in handing you the sum of One thousand dollars (\$1000) the amount of the fine in this case, which has been most willingly subscribed by the community here.

We only regret we are unable to cancel or shorten the term of your imprisonment, which we feel is the hardest portion of your punishment, and which H. M.'s Envoy felt himself called on to add to the original sentence of the Consul.

But as far as the community resident here is concerned, we assure you, we consider that you will go forth with no stain on your character, and we sincerely trust, that when the whole facts of the case are made known to the public, they also will arrive at the like conclusion.

With every good wish for your future welfare,

We remain, dear Sir,

Your obedient servants,

(Signed)

JOHN B. ROSS.  
A. J. MACPHERSON.  
SAML. MAINE.  
H. HOOPER.  
W. G. ASPINALL.  
FREDK. H. BELL.  
HENRY BUSH.  
J. S. BARBER.  
THOMAS HOWELL.  
J. BIRDSEYE.  
THOS. BAKER.  
THOS. ESKRIGGE.  
THOS. MURRAY HOLME.  
HENRY WILLGOSS.  
P. R. HALL.  
S. ROBERTSON.

LOUIS BOURRET.  
JNO. ALLMAND, JUN.  
EDWARD CLARKE.  
THOS. TATHAM.  
D. B. SIMMONS.  
W. KESWICK.  
KNIGHT AND HECO.  
D. C. BROWER.  
C. T. ELMSTONE.  
JOHN O. P. STEARNS.  
E. S. BENSON.  
JOHN H. DUUS.  
C. H. RICHARDS.  
E. M. VAN REED.  
FRANCIS E. BOYD.  
F. GARNIER.

## No. XIX.

*British Consulate, Kanagawa, August 30th, 1861.*

SIR,—I am directed by Her Majesty's Envoy Extraordinary and Minister Plenipotentiary in Japan, to acquaint you that so far as the proceedings against you, under the indictment of the 12th December, 1860, are concerned, there exists no impediment to your return to Japan; and that the fine of \$1000 paid by you will be remitted to such person as you may duly authorize to receive the same on your account.

As I am uncertain of your present place of residence, I enclose this to your Attorney at Hong-Kong, Mr. Pollard, and you will be pleased to acknowledge its receipt.

I have the honour to be,

Your most obedient humble servant,

(Signed)

F. HOWARD VYSE,

*H. B. M.'s Consul.*

TO MICHAEL MOSS, Esq.,  
*Hong-Kong.*

## No. XX.

*Hong-Kong, October 11th, 1861.*

SIR,—I have received a cover purporting to come from the "British Consulate, Kanagawa," and addressed "Mr. Pollard, Lawyer, Hong-Kong," which the post office authorities here have sent to me, as being the only person to whom the address "Mr. Pollard, Lawyer," could refer. I have therefore opened the cover, which contained no letter to any one of the name of Pollard, but another cover addressed "Michael Moss, Esquire." If this cover was intended to reach my hands, permit me to observe that it would only have been ordinary civility to address me a few lines stating why a letter to another person is sent to me. Perhaps I have no right to expect courtesy from the Consul for Kanagawa, as, for some reason unknown to me, he has never deigned to answer a

letter I addressed to him on the 28th February last, written by me in my professional capacity, which, for your information, is that of a member of the English Bar.

As I cannot see why my profession should absolve you from the ordinary courtesy due from you, if only in your official character, I shall retain the letter addressed "Michael Moss, Esquire," until I hear from you the reason why it is forwarded to me in a blank envelope, and what you may wish to have done with it.

I have the honor to be,

Sir, your obedient Servant,

(Signed)

EDWARD H. POLLARD.

To F. H. VYSE, Esq.

*H.B.M.'s Consul, Kanagawa.*

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## No. XXI.

*Hong-Kong, December 30th, 1861.*

SIR,—During the trial of the cause, *Moss v. Alcock*, a letter No. 103 from yourself, under date 30th August last, was produced in Court.

Although addressed to me, it had not before been handed me, for reasons which I learn you are informed on. Agreeably to your request, I beg to acknowledge your communication, and to state, that I have by this opportunity duly authorized Mr. Samuel Maine, of Yokuhama, to receive on my account, One thousand Mexican dollars, amount of fine I paid into your Court on the 20th December, 1860, and which you now inform me by the direction of H.M. Envoy Extraordinary and Minister Plenipotentiary in Japan, is remitted.

I have the honor to be, Sir,

Your obedient humble Servant,

MICHAEL MOSS.

To F. HOWARD VYSE, Esq.

*H.B.M.'s Consul, Kanagawa, Japan.*

## No. XXII.

*Hong-Kong, December 30th, 1861.*

SIR,—Herewith I authorize you to receive from H.M.'s Consul for Kanagawa, One thousand Mexican Dollars, being amount of the fine paid by me in December last, and now remitted.

You will please deal with this sum as instructed in private letter of this date.

I am, Sir,

Your obedient servant,

MICHAEL MOSS.

TO SAMUEL MAINE, Esq.  
*Yokuhama, Japan.*

## No. XXIII.

JAPAN, (MR. MOSS).

RETURN to an Address of the Honourable The House of Commons,  
dated 17 June, 1861 ;—for,

“COPY of Mr. *Hammond's* LETTER, dated Foreign Office, the 31st day of May, 1861, communicating the Decision of Her Majesty's Government on the SENTENCE passed on Mr. *Moss* at *Japan*.”

*Foreign Office, 31st May, 1861.*

SIR,—I am directed by Lord John Russell to acquaint you, with reference to my letter of the 23rd of February, that the proceedings in the case of your son, Mr. M. Moss, in the British Consular Court at Kanagawa, having been duly considered in communication with the Law Officers of the Crown, Mr. Alcock has been instructed to apprise Mr. M. Moss that, so far as the proceedings against him under the indictment of the 12th December 1860 are concerned, there exists no impediment to his return to Japan; and that the fine of 1,000 dollars (if it has been paid by him) will be at once remitted to such person as he may name to receive the same on his account.

I am, &c.

(Signed)

E. HAMMOND.

TO MR. S. MOSS.

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## No. XXIV.

## LETTER TO EARL RUSSELL.

*6, Langbourn Chambers, Fenchurch St.,  
31st March, 1862.*

MY LORD,—Your Lordship is, I believe, cognizant of certain proceedings which took place in Japan towards the end of the year 1860, resulting in my Trial upon very grave charges before Her Majesty's Vice-Consul at Kanagawa, and three Assessors, and in my Counter-complaint against the Government of Japan for illegal, and most cruel conduct, towards me.

It is not my present purpose to enter into the merits of the Case, nor into any detail of the circumstances attending the Trial. It will be sufficient to remind your Lordship that I was thought by the Vice-Consul to be guilty of the charges against me—all the Assessors dissenting. In consequence of this dissent no Verdict was then found or sentence pronounced; but the matter was referred to Mr. Alcock, Her Majesty's Consul-General, and by him I was declared to be guilty, and sentenced to a fine of 1000 dollars, and to deportation from Japan, and I was further condemned to the ignominy of three months' imprisonment in Her Majesty's gaol at Hong-Kong. My Lord, I deny the justice of this Verdict and Sentence, legally and morally. It was, however, carried into execution; the fine was paid. I was dragged away from my business and means of existence, and thrown into the Common Gaol in the pestilential climate of Hong-Kong.

I immediately, under the best advice I could obtain, commenced proceedings in the Supreme Court there, to procure my Release, and such compensation as I might be entitled to for the injury which I had sustained.

I was released after a week's imprisonment; but it was not until the month of December last that the Action which I had brought against Mr. Alcock could be tried, in consequence of weary and vexatious delays, none of which were created by me.

The Chief-Justice, on the Trial, was of opinion that he had only a concurrent jurisdiction with the Consul and Consul-General at

Japan to try Actions, the cause of which arose in that Country, and he consequently confined the attention of the Jury to the bare imprisonment in Hong-Kong; stating, at the same time, that "owing to a defect in the Order in Council (23rd January, 1860,) there was no provision made for trying Consuls, &c., for acts done in Japan." No evidence was therefore given of those acts, and they were only incidentally alluded to, but when the Jury had found a Verdict in my favour, awarding to me 2000 Dollars for the injury which I had sustained by the imprisonment alone, the Judge asked the Jury "what additional sum they would have given had he been able to leave to them the question of damages for the acts of Mr. Alcock done in Japan,"—and the Jury, after again consulting, said "from 15,000 to 20,000 Dollars." I venture to say that had those facts been fully laid before them, of which they had then only a very imperfect knowledge, the amount of the Verdict would not have been limited even to the larger of those two sums.

In the meantime, the proceedings in Japan had been brought under your Lordship's consideration, and instructions were sent to Mr. Alcock to withdraw the restriction against my returning to that Country, and to remit the Fine. The term of my imprisonment, had I not been released by other means, would have expired long before any remedy could have been applied.

The implied permission to return to Japan is valueless; my property there, having to be realised at a few days' notice, was, as your Lordship may easily imagine, cruelly wasted—land, houses, and goods sold for what they would fetch at the moment—Debts due to me from Natives compromised for anything I could get—and my credit greatly impaired, if not altogether lost—and now, after a whole year's forced absence, the place which I had made for myself is occupied by others.

Thus, my Lord, by the acts of Her Majesty's Representative my means of starting in life have been destroyed, and my future prospects blighted—acts which your Lordship has decided were illegal—which the Chief-Justice of the Supreme Court at Hong-Kong has decided were illegal, and for which the Jury there



assessed a partial compensation; and yet, in consequence of what the Chief Justice called "defective legislation," I can have no redress against the wrong-doer.

The Order in Council (23rd January 1860), which gave to the Consul-General his judicial function, clothed him also with a Statutory protection, which, by its limitations and provisions, deprives me of my Common Law Right, and leaves me without a remedy.

I therefore left China, and have come this long and laborious voyage for the purpose of submitting these facts to your Lordship, and to beg that you will give them a careful consideration, in the confident hope that if you shall find my Case to be as I have represented (of which I have no fear,) you will take means to rectify the injustice which the "defective legislation" has inflicted upon me, and to place me in a not less favorable position than I should have been in had the Judge been able to carry into effect the Verdict of the Jury.

I am here to answer any inquiry,—to give any explanation,—and to adduce any proofs that may be required. I have carefully avoided any exaggeration or harsh expression, and I will only add that, if necessary, I should not despair of convincing your Lordship that Her Majesty's Consul and Consul-General in Japan were as much in error in their estimate of the facts of my Case, as they are admitted to have been in the Law.

I have the honor to be, my Lord,

Your Lordship's most obedient humble Servant,

MICHAEL MOSS.

The Right Hon. EARL RUSSELL, K.G., G.C.B.,  
*H.M.'s Secretary of State (Foreign Department.)*

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No. XXV.

6, Langbourn Chambers, Fenchurch Street,  
April 2nd, 1862.

SIR,—Having been informed by Mr. Alderman Salomon, M.P., that you would allow me an interview, at which I might give you

verbally the details of my unfortunate collision with Officers of the Japanese Government, and the grave injustice and injury I labour under from the decision and sentence of H. M.'s Consul-General at Yedo, may I be permitted to inquire what time will be convenient to yourself for this purpose.

I am, Sir,  
Your most obedient humble Servant,  
MICHAEL MOSS.

A. H. LAYARD, Esq., M.P.  
*Under Secretary of State (Foreign Department).*

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No. XXVI.

*Foreign Office, April 10th, 1862.*

Sir,—In reply to your letter of the 31st ult., I am directed by Earl Russell to inform you that he must decline to enter upon any point connected with the legal proceedings taken against you in Japan, so long as the case is still before the Courts.

I am, Sir,  
Your most obedient, humble Servant,  
E. HAMMOND.

MICHAEL MOSS, Esq.  
6, Langbourn Chambers, Fenchurch Street.

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No. XXVII.

6, Langbourn Chambers, Fenchurch Street,  
14th April, 1862.

MY LORD,—I have the honour to acknowledge your communication of the 10th inst., in which you decline entering upon any point of my letter of the 31st ult. so long as the case is still before the Courts.

I have the honor to be,  
Your Lordship's most obedient humble Servant,  
MICHAEL MOSS.

To the EARL RUSSELL,  
*Secretary of State, Foreign Office.*

## No. XXVIII.

6, *Langbourn Chambers, Fenchurch Street,*  
*London, 1st May, 1862.*

MY LORD,—I have the honour to address myself to your Lordship on a circumstance which occurred in Kanagawa, Japan, eighteen months ago.

On the outset this may likely appear to you singularly remote, and I may seem dilatory in not having sooner brought it before your Lordship's attention. The causes, however, which have prevented me doing so will, I trust, as they have been beyond my control, satisfy your mind that it has been through no fault or want on my part.

I beg your Lordship will pardon me, if, relying on your Lordship's well-known sense of justice, I explain at some length, although as concisely as I am able, the grounds on which I presume to place myself before your attention, and the nature and character of the subject I take leave to introduce to your consideration.

On the 26th November, 1860, I was residing in Yokuhama, Japan. On that day, availing myself of a right which I can clearly prove was then acknowledged, which in fact at that date existed, I went into the adjoining Country, within the limits prescribed by Treaty, to enjoy a couple of days' shooting. On my return next day, while walking through the public high road of Kanagawa, and but a very short distance from the British Consulate, I was seized by Officers of the Tycoon of Japan, bound and beaten with extreme severity and torture, and brutally wounded and outraged.

The Japanese Officials who thus took me prisoner detained me for a few hours in a house close by, bound and bleeding, suffering beyond almost bearing by the torturing tension of the muscles of my arms, which they had savagely braced over the shoulders. Then, spite of my reiterated urgent demands that my Consul should be informed of my position, I was secretly carried to a prison a few miles distant, where they left me. Shortly after

midnight, a Japanese Doctor and several Officials visited me in my cell; the former dressed my wounds. On my seeking to know the cause of my apprehension and their object in imprisoning me, I was told to keep quiet; that, on that morning, some Officials of high rank would investigate my case. On further inquiry I was told that I should be condemned to death, and that by strangling. It is needless for me to make any allusion to the terrible and unhappy state of mind such a communication left me in; your Lordship may better understand this than it is possible for me to explain. I may though remark, that it was not the pending doom and close approach of death that alone caused me grief and pain. I had had no means of communicating with my friends or any foreigners; for I had been so carefully and cunningly captured and imprisoned, that it had been out of my power to make any one I knew aware of my position. Little hope had I therefore of escape; and I do most solemnly assure your Lordship I believed my life was about to be forfeited; and relying on my humble faith in the Omnipotent Will of God, I had prepared for my fate with the best heart I could.

I should have mentioned that, in the confusion of my seizure, surrounded by armed and apparently incensed Japanese, a double-barrelled gun I had in my hand was torn from me, and whilst I was being bound and beaten, I heard it explode. Permit me to request that, in justice to myself, your Lordship will bear in mind I had not fired this gun, and that it was not then in my hands; but the streets being very crowded (so much so that many of the men who seized me were themselves, in the confusion, beaten and trampled upon), I had cause to fear severe injury had been done. I had, moreover, been told by my jailers that an Official of high rank had been shot.

It was the knowledge of this accident which added bitterly to the unhappiness with which I awaited events in my imprisonment. I knew not what interpretation might be placed on my absence in connection with the shooting of a Japanese. And I think your Lordship will admit that the conclusion I came to was not an unreasonable or unlikely one—that the Japanese might

report a foreigner had shot a native Official, and had, they supposed, summarily suffered for his offence; beyond this they were unable to account for his non-appearance. This was indeed an aggravation to my wretched state of mind; for then not only should I have been brutally outraged, and as I anticipated murdered, but blame and disgrace would have been attached to my name. Under such misrepresentations it might with reason have been said I had only received the punishment due to outrage,—and outrage too against inoffensive men, subjects of a country it was our duty to propitiate; and that as too great censure could not be attached to those who so regardlessly offended, little sympathy could be felt for an offender who met with punishment.

I trust your Lordship will pardon me for having dwelt on these details; my excuse is, that I am most anxious your Lordship may understand what was my position and state of mind at the time; and I have abstained and shall endeavour to abstain from the slightest exaggeration or aggravation of facts, and sincerely hope that I shall not use a single word that may offend or appear unnecessary to your Lordship's judgment or sense of honour.

Some hour or so after the Japanese Doctor had visited me, I thank God I was rescued by the British Consul. The events which happened after that time, and the misfortunes which attended me,—I ought rather to say the unjust and damaging punishments, imprisonments, and delays I had to bear, I will not now intrude on your Lordship's notice; they form the subject-matter of a grave and to me most ruinous grievance, and are before the consideration of Her Majesty's Secretary for Foreign Affairs, to whose department they more regularly fall; and I need not say that I am confident they will be impartially and fairly adjudged by the able and wise Nobleman holding that high and honourable position. One circumstance though I beg to mention, simply to prove that through no error on my part do I now trouble your Lordship with this matter. After I had sufficiently recovered from the brutal treatment I received to put pen to paper, I addressed myself, through Mr. Consul Vyse, to the British Minister, Mr. Alcock, stating, under oath, what had

occurred, and laying a claim of \$30,000 (Thirty thousand dollars) against the Japanese Government, and requesting the Minister's aid in forwarding it, for the mental and physical hardship I had suffered through the outrageous and illegal conduct of their Officers.

I use, my Lord, the word illegal advisedly, and in this construction, opposed and in violation to Treaty and Treaty stipulations. And I am sure that I shall be able shortly to show your Lordship clear and consistent proof why I am justified, which I contend I am, for considering my seizure to have been an illegal one.

The English Minister at Yedo appeared, however, to hold a different opinion, for he returned my communications—and without comment, ignored my application to him.

I would take the liberty of recalling your Lordship's attention for a moment to those portions and regulations of the Treaty which make provision for the arrest of British subjects. The Treaty wisely foreseeing difficulties and complications that might arise, should no provision be made for personal misconduct or disturbance, determines that a British subject, unless in the open commission of an offence or misdemeanor, cannot be seized or arrested by Japanese Officials without a Warrant from a British Consul. That in all cases, whether a prisoner has been so apprehended by warrant, or *flagrante delicto*, without one, in every case are the Japanese Officials, at once and without delay, to take him before his Consul, to whom they will state the nature of his offence and their complaint, and that such offender will be judged by the law of England, as if the offence had been committed in England.

These Treaty regulations are clear, full, and bear no misinterpretation.

Assuming that the shooting of Game was illegal by Japanese Law (which I do not admit), that such Law had been made known to Englishmen, and that its infraction carried with it punishment, it cannot be said that, whilst peaceably walking through the public high street of Kanagawa, I was in the *open commission* of

an offence. Strong presumptive circumstantial evidence there was in favour of my *having* offended; my servant being a few paces behind me, carrying my gun and a bird I had shot. But this, though strongly in favour of the assumption that I had been shooting game, cannot be construed into the open commission of it. Yet in such event, and in such event only, could Officials of the Tycoon of Japan, agreeably to Treaty arrangement, arrest a British Subject without a Warrant from the Consul.

Let us, my Lord, pass this by for a moment. Why did they so cruelly and savagely beat and wound me? Why subject me to aggravated brutal treatment, which God's Will and the excellent health I then fortunately enjoyed, alone prevented from having a most serious and perhaps everlasting damaging effect on me bodily, as it might have had mentally? For this barbarous conduct there is no explanation. I was quickly overcome by pressure of numbers, and their brutality ended not when they had me bound and helpless.

But far more seriously than even in this respect have Treaty provisions been ignored. The provisions of a Treaty without which, I need not add, life is unprotected and at the mercy of the nearest ruffian.

Fortunately for my ultimate safety, the English Consul, who was at the time investigating at the Consulate the particulars of the seizure of a German under British protection, which had occurred on the previous day, was informed by a Japanese coolie that some disturbance was going on in the street.

When the Consul understood the nature of this information he hastened to the spot, but could only learn that a Japanese Official had been shot. Where was the man who had committed the offence, or who the man was, the Consul was unable to ascertain.

This happened at two o'clock after noon, in broad open daylight, in the principal street of the town—indeed on the high road of Japan.

It was not until later in the day that the community of Yokohama could conclude, however strong their surmise, who was the missing man that had committed this offence. I am, my Lord,

not informed what were the steps adopted by Mr. Consul Vyse to induce the Japanese Governor and authorities to act fairly, and aid him in finding, or to produce, the missing Englishman.

I have not any doubt that that gentleman acted with the utmost zeal, promptitude, and ability. Yet the authorities, highest to lowest, all denied any knowledge of my whereabouts; and even the very men who surrounded the wounded Official, and whom Mr. Consul Vyse must have seen not ten minutes after the seizure, and who must have aided in my capture, all pretended the most complete ignorance of my position or even of my name.

I should state to your Lordship that, during the first few hours of my arrest, the Japanese authorities, into whose hands I had fallen, represented to me that communications were going on between the English Consul and the Japanese Governor of Yokuhama about me, and that I was being detained only till their decision as to my fate should arrive. This was a *ruse*, which discovered itself a little later. After dark they gave me to understand that they were about carrying me from Kanagawa to Yokuhama, to the English Consul, who was at the Custom House there, in consideration with the Japanese Governor about me. But instead of doing so, they with great caution and secrecy took me across the Bay, and cast me into a prison behind the Foreign Settlement, where, no doubt, they considered I was in safer custody, and more out of the way.

At length the Consul, the day having produced no result, wearied out, and disbelieving the protestations of the authorities respecting me, resolved on a more resolute and determined action.

Taking with him the Japanese Governor of the Town to the prison, where it appeared he had reason to conclude I was confined, he at length succeeded in gaining an entrance, and seeking in person for me. At the gates of the prison itself the Japanese authorities again and again denied any knowledge of my where-



abouts—denied I was in their hands, and refused Mr. Consul Vyse the right of search, in violation once more of that stipulation of Treaty which states that a Consul must identify and take possession of the person of his subject, who is not to be held by Japanese authority, unless at his request.

Mr. Consul Vyse alone succeeded in his determination to recover me by the threatened use of force, and thus compelling the right of search, which that gentleman unflinchingly persisted in maintaining.

The force I allude to, consisted of the armed Community of Yokuhama, who were at hand with a strong body of Prussian Marines from the Prussian ship "Arcona," and two howitzers, forming the aid placed at the Consul's service, on his request, through the polite kindness of the Prussian Commodore.

Withdrawing from this long string of detail—and in having brought it thus far before your Lordship I trust I shall not be deemed importunate or troublesome—I would place before your Lordship's consideration the miserable and painful sufferings which I have been caused by the Japanese Government.

I contend, and whenever called on am ready to prove, that my seizure by the Japanese authorities was in direct violation of Treaty; that their conduct after my capture confirmed, added to, and aggravated their outrage.

I would again beg your Lordship to bear in mind that this claim, which I now bring to your Lordship's notice, is quite distinct from that which has been submitted to and is at present under the consideration of Her Majesty's Secretary for Foreign Affairs, arising out of a Civil process against the British Minister in Japan.

The Japanese Embassy being about to visit this Country, I have deemed the present moment the opportune one for placing against their Government, through them, this Claim for compensation for the grievous injuries, and the physical and mental torture they inflicted on me; and I hope, having respectfully submitted to your Lordship the grounds on which I bring this Claim, your Lordship will acknowledge its justice, and lend

your most valuable aid in placing it before the Japanese Ambassadors, and strongly urging the matter for their attention.

I am, my Lord,

Your Lordship's most obedient, humble Servant,

To the

MICHAEL MOSS.

Right Hon. VISCOUNT PALMERSTON, K.G.

&c. &c. &c.

### No. XXIX.

10, *Downing Street*, May 6, 1862.

SIR,—I am desired by Lord Palmerston to acknowledge the receipt of your communication of the 1st inst., and to inform you that he has forwarded it to the Foreign Office.

I am, Sir, your obedient servant,

EVELYN ASHLEY.

MICHAEL MOSS, Esq.

### No. XXX.

6, *Langbourn Chambers*, London, 7th May, 1862.

SIR,—I beg to acknowledge your letter of yesterday, informing me, by desire of Lord Palmerston, that his Lordship has forwarded my communication of the 1st inst. to the Foreign Office.

I have the honor to be, Sir,

Your obedient servant,

MICHAEL MOSS.

EVELYN ASHLEY, Esq., &c.

### No. XXXI.

6, *Langbourn Chambers*, Fenchurch St.,  
22nd May, 1862.

MY LORD,—Some time ago I addressed to Lord Viscount Palmerston the letter, a copy of which accompanies this. It relates to a claim which I believe myself to have against the *Government of Japan*, quite distinct from the appeal which I have

already ventured to lay before your Lordship as to the proceedings of Mr. Alcock, Her Majesty's Representative in that country, and I was under the impression that such a subject could only with propriety be submitted to the Premier.

I am now informed that my impression was erroneous, and that in addressing myself to Lord Palmerston I not only departed from the usual forms, but that the step I had taken might even be construed into an act of personal discourtesy to your Lordship. I therefore hasten to say that I beg you will believe that nothing could be more foreign to my intention than even the semblance of disrespect to your Lordship, and I trust that you will accept my apology for the irregularity of which I appear to have been guilty, arising from my total ignorance of official forms, and my great anxiety that I may not hereafter have to reproach myself with having neglected any legitimate means of urging claims which to me are of such vital importance.

May I further take the liberty to request your Lordship will inform me whether my communication has been submitted to, or is under, your consideration.

I am, my Lord, your Lordship's

Most obedient humble servant,

MICHAEL MOSS.

The EARL RUSSELL, &c.

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No. XXXII.

*Foreign Office, May 24, 1862.*

SIR,—I am directed by Earl Russell to state to you, in reply to your letter of the 22nd instant, that the memorial addressed by you to Lord Palmerston on the 1st instant, on the subject of the treatment you received at the hands of the Japanese authorities at Kanagawa, in 1860, has already been submitted to Lord Russell, and is under his Lordship's consideration.

I am, Sir,

Your most obedient humble Servant,

G. HAMMOND.

MICHAEL MOSS, Esq.,

6, Langbourn Chambers, Fenchurch Street.

## No. XXXIII.

6, Langbourn Chambers, Fenchurch Street,  
17th June, 1862.

SIR,—To a former solicitation that you would be kind enough to afford me an interview, for the purpose of my verbally putting before you the disastrous position in which I had been placed, I contended through the unjust and damaging punishments inflicted on me by a sentence of Her Majesty's Representative in Japan, and arising out of a collision with the Japanese in the streets of Kanagawa, in November 1860, I received in reply, that such an interview must be declined so long at least as the matter was before any Court of Law. So far as I am myself concerned, there are no legal measures pending, and as regards Her Majesty's Representative in Japan, you will ere this, no doubt, have been informed, that Mr. Rutherford Alcock returned to England three weeks ago.

The extreme difficulty of my position, and the ruinous damage which delay and the protracted decision of my cause increase day by day, adding bitterly to its hardship, will, I trust, be deemed a sufficient excuse for again calling your attention to myself, and once more requesting a personal interview.

I am, Sir,

Your most obedient and humble servant,

MICHAEL MOSS.

A. H. LAYARD, Esq., M.P., &c.

*Under Secretary of State, (Foreign Department).*

## No. XXXIV.

6, Langbourn Chambers, Fenchurch Street,  
17th June, 1862.

MY LORD,—I had the honor to address your Lordship a few weeks back on the subject of a claim against the Japanese Government, and also in a previous memorial I had placed before your Lordship, the hardship and injustice of my position, arising out of the verdict of Her Majesty's Representative in Japan.

In due course I was informed that the communications had been received, and were under consideration.

Mr. Rutherford Alcock having now been three weeks in England, your Lordship has doubtless been enabled to be made fully acquainted with the particulars of my case, and as delay and loss of time add bitterly to my anxiety, and increase day by day the hardship and damage I have already suffered, I trust I shall not be considered troublesome if I recall your Lordship's attention to the matter, and beg to be informed whether your Lordship has decided on its merits.

I am, my Lord,  
Your Lordship's most obedient humble servant,  
MICHAEL MOSS.

The EARL RUSSELL, K.G., G.C.B., &c.  
*Secretary of State, (Foreign Department).*

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No. XXXV.

*Foreign Office, June 18th, 1862.*

SIR,—I have received your letter of the 17th instant, again requesting that I would see you upon the subject of certain proceedings in Japan, and I have to express my regret that I cannot grant you this personal interview.

I am, Sir,  
Your obedient servant,  
A. H. LAYARD.

MICHAEL MOSS, Esq.

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No. XXXVI.

*Langbourn Chambers, Fenchurch Street,  
17th July, 1862.*

MY LORD,—I have the honor to recall your Lordship's attention to my letter of the 17th ult., to which I am, as yet, without a reply.

May I once more beg to be informed whether your Lordship has arrived at any decision with regard to the merits of my case.

I am, my Lord,

Your Lordship's most obedient humble servant,

MICHAEL MOSS.

The EARL RUSSELL, K.G., G.C.B., &c.

*Secretary of State, (Foreign Department).*

No. XXXVII.

*Foreign Office, July 23rd, 1862.*

SIR,—I am directed by Earl Russell to acknowledge the receipt of your letters, of the 17th ultimo and 17th instant, and I am to state to you, in reply, that the claim to which those letters relate has been referred to the Law Officers of the Crown.

I am, Sir,

Your most obedient humble servant,

A. H. LAYARD.

MICHAEL MOSS, Esq.,

*Langbourn Chambers, Fenchurch Street.*

No. XXXVIII.

*Langbourn Chambers, Fenchurch Street,  
24th July, 1862.*

SIR,—I beg to acknowledge the receipt of your letter of yesterday's date, informing me by desire of Earl Russell that the claim to which my communications of the 17th ultimo and 17th instant relate, has been referred to the Law Officers of the Crown.

I am, Sir,

Your most obedient humble servant,

MICHAEL MOSS.

A. H. LAYARD, Esq., M.P., &c.

*Under Secretary of State, (Foreign Office).*

## No. XXXIX.

*Langbourn Chambers, Fenchurch Street,  
28th July, 1862.*

MY LORD,—From the particulars that have been submitted from time to time to your Lordship, respecting my collision with Japanese Officials in the streets of Kanagawa in November, 1860, your Lordship, I gather, is inclined to the opinion that the wounded man "Oyarkunetaro" was injured intentionally, and the gun fired, by me.

Permit me, your Lordship, to remove this misapprehension.

In my statement under oath, forwarded to H.M. Representative in Japan, immediately I had sufficiently recovered to write it, I explained that the gun was torn from me whilst it was grounded, and when I was about speaking to the Chief of my assailants, and that I had fallen, and was being bound with ropes when I heard it explode.

I crave your consideration of this fact, and I do now most solemnly assure your Lordship, in all honor, of the entire truth and fidelity of that statement.

I am, my Lord,

Your Lordship's most obedient humble servant,

MICHAEL MOSS.

The EARL RUSSELL, K.G., G.C.B., &c.,  
*Secretary of State, Foreign Office.*

## No. XL.

*Foreign Office, July 26, 1862.*

SIR,—I am directed by Earl Russell to convey to you the decision of Her Majesty's Government on the claim put forward by you in your letter of the 1st of May, to be compensated by the Japanese Government, on account of the treatment to which you were subjected at Yokuhama in November, 1860.

It appears that the demand made by Her Majesty's Minister on the occasion in question was limited to an application for the

punishment of the chief offenders ; that demand was finally acceded to by the Japanese Government, and Her Majesty's Government are not prepared, at this distance of time, to re-open the question, by making a new and a further demand for the payment of a pecuniary compensation to you.

Under these circumstances, Lord Russell does not think it necessary to go into the several matters discussed in your letter, or to argue the Question whether, under the Treaty of 1859, the Japanese Authorities were, or were not, borne out in arresting you.

I am, Sir,

Your most obedient humble servant,

A. H. LAYARD.

MICHAEL MOSS, ESQ.,

6, *Langbourn Chambers, Fenchurch Street.*

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No. XLI.

*Langbourn Chambers, Fenchurch Street,  
30th July, 1862.*

SIR,—I have the honour to acknowledge receipt of your communication of the 26th instant, stating, by desire of Earl Russell, that, in reply to my letter of 1st May, Her Majesty's Government are not prepared at this distance of time to regard the claim for compensation I therein brought against the Japanese Government, and that Lord Russell, therefore, does not think it necessary to go into the several matters urged in that letter.

I am, Sir,

Your most obedient humble servant,

MICHAEL MOSS.

A. H. LAYARD, ESQ., M.P., &c.,

*Under Secretary of State, Foreign Office.*

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No. XLII.

*Foreign Office, August 11, 1862.*

SIR,—I am directed by Earl Russell to acknowledge the receipt of your letter of the 28th ultimo, assuring his Lordship



upon your honour that the shot by which a Japanese was wounded on the occasion of your collision with the Japanese Officials at Kanagawa was not fired by you, and that the gun had been torn from you, and you had fallen, and were being bound with ropes, when you heard it explode.

I am to inform you, in reply, that Lord Russell is glad to receive this statement, to which his Lordship gives full credit.

I am, Sir,

Your most obedient humble servant,

A. H. LAYARD.

M. Moss, Esq.,

*Langbourn Chambers, Fenchurch Street.*

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No. XLIII.

*Langbourn Chambers, Fenchurch Street,  
12th August, 1862.*

SIR,—I have the honor to acknowledge your letter of yesterday, informing me that Lord Russell had received my communication of the 28th ultimo, and attached full credit to its contents, for which I beg to thank his Lordship most sincerely.

I am, Sir,

Your most obedient humble servant,

MICHAEL MOSS.

A. H. LAYARD, Esq., M.P., &c.

*Under Secretary of State, (Foreign Office).*

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No. XLIV.

*Foreign Office, August 30th, 1862.*

SIR,—I am directed by Earl Russell to inform you that Her Majesty's Government have considered your letter of the 31st of March, in which you ask for compensation from Her Majesty's Government, on account of the legal proceedings to which you

were subjected in Japan. Her Majesty's Government having consulted the Law Advisers of the Crown, are not prepared to entertain that Claim.

It appears that you availed yourself of your legal remedy against Sir Rutherford Alcock in the ordinary course of Law at Hong-Kong, and that you recovered such damages as the Court there had jurisdiction to give. If you have still any further cause of action, not covered by that judgment, the Courts of this Country are open to you.

I am, Sir,

Your most obedient humble servant,

A. H. LAYARD.

M. Moss, Esq.

*Langbourn Chambers, Fenchurch Street.*

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No. XLV.

*Langbourn Chambers, Fenchurch Street,  
28th July, 1862.*

SIR,—On your suggestion as to the advisability of conveying a fair estimation of the general character and value of the Japanese testimony, and removing any misapprehension on this subject which may be entertained by those remote from its scene, or under whose observation Japanese evidence may not have come, I beg to place before you an opinion strongly expressed on this head by H. M.'s Representative in that Country, and the following few facts which occurred during my own trial in the British Consular Court at Kanagawa.

H. M.'s Representative, in a letter addressed by Mr. Vice-Consul Eusden to certain members of the British Community of Hakodadi, dated 18th August, 1860, after referring to charges that had been made against a gentleman now in this country,—says, “On the most cursory glance it is obvious that most of the “alleged acts of aggressive violence, if not all, have been reported “on hearsay, and *such evidence as Japanese witnesses* AT BEST

*"can supply, and it may reasonably be doubted whether any of the present complainants would be ready to admit the fairness of a judgment resting on NO OTHER OR BETTER FOUNDATION."*

The nature of Japanese evidence can indeed be only rightly appreciated by those who witness the conduct of the Japanese whilst under examination. The value and character of their testimony may be judged, when it is stated that all questions are placed through their own interpreters, seldom an impartial medium.—That often before answers can be given by a witness, the party whose witness he may be, does not hesitate to prompt him by gesture, or to guide him by word of mouth.—That conversation passes between interpreter and witness, which the former explains away as the difficulty of rendering an idiom, finding a synonyme, or the non-comprehension of the witness.—Again, there is no check on the version by the interpreter, of a witness's reply being the true one.—And though, in many statements and facts, a witness may be honestly giving the truth, it rarely happens that any one man's entire evidence will bear the test of severe scrutiny or analysis.

Unaccustomed as they appeared to cross-examination, it was curious to note their perplexity, more particularly remarked after a break, or a day's interruption, in a trial.

Their custom is for a Chief or head man to make a deposition on oath, which consists merely in attaching the mark of his seal at foot of his statement, to which his witnesses, generally his partisans, or those under his control subscribe, but he is not subjected to the rude ordeal of cross-examination, nor are his witnesses.

During the progress of my own trial, a witness often replied to a question by the easy mode of saying, that he repeated what his head-officer had stated on that matter, or that his answer was the same as that given by the Ometsky, an official who appeared to play somewhat of a legal character amongst them.

Passing for a moment to my own trial, the first of importance

in which Japanese witnesses had come under cross-examination in an English Court, it was significant that several witnesses were dismissed, their examination discontinued, and their testimony cancelled, in consequence of the grossness of their depositions, and their constant and too palpable false statements and contradictions.

A verbatim account of the evidence of Japanese witnesses would be, and is, in itself, the right exponent of Japanese truth, and determines the credence to be attached to their statements on oath.

The prosecutor in my own trial, who was principal witness and Mayor of Kanagawa, and who commanded the party of Japanese that attacked me, was repeatedly during his examination cautioned; and again and again warned by the British Consul that his falsehoods and prevarications would be made a subject for serious representation to his Authorities at Yedo.

By contradicting or interrupting witnesses, by prompting or leading them by open speech, the conduct of this head official was remarkable, and not alone proved to all who were present his disregard of justice, or of a decent administration of it, but was an unanswerable argument of the worth of Japanese testimony, and convinced all of the cruelty and very doubtful justice of a judgment, to use the words of H. M.'s Minister in Japan, "resting on no other or better foundation."

As to the effect of Japanese evidence on those who may have heard it, I will quote a portion from the Letter of Protest of the Assessors, who sat with the Consul to try my own case, and which bears, not alone on the character of Japanese testimony, but has direct reference to the shooting of the injured Japanese, and may aid to destroy the misapprehension entertained on this head.

After reviewing the particulars of my trial, the letter goes on to say, "In so far as your Excellency states that the prisoner's own statement convicts him we maintain, that it strengthens our own opinion that it was a plain and straightforward one. He admits that he cocked and pointed the gun, an admission, which your Excellency receives as a sufficient proof of his evil intent.

"This he declared was done with the object of intimidating and  
"keeping off his pursuers, as he had no intention to shoot, well  
"knowing that the gun once discharged he would be helpless  
"with no other effect than outraging his opponents, and he fur-  
"ther solemnly declared that the gun went off after it had been  
"wrested out of his hand. This, we conceive, to be the real state  
"of the case, and no arguments of your Excellency, *after the*  
"*evidence of such PERJURED WITNESSES as we listened to, can*  
"*shake in the very least degree our belief in its truth.* Your  
"Excellency is doubtless aware *that one of the witnesses, upon*  
"*whose evidence the charge of wounding was principally founded,*  
"*was publicly cautioned by the Consul in the middle of his exa-*  
"*mination, and told that his answers would probably form the*  
"*subject of inquiry at Yedo."*

In reply to direct questions as to the shooting of the wounded man, the Japanese, one and all, without any hesitation, swore that the Official had been shot by me; when under cross-examination however, their answers to other questions leading indirectly to this circumstance, were very different and conflicting and inconsistent with this, their unanimous deposition.

In a paragraph of a letter of sympathy addressed to me by the Foreign Community of Yokuhama, one very important fact was brought to light, which, as it removes all doubt as to the shooting the wounded man, I herewith annex. "The only important circumstance bearing on the case, we have to mention apart from the evidence, is, that persons here, well acquainted with the Japanese language, have been informed by the Japanese shop-keepers, eye-witnesses of the occurrence, that the gun was in the hands of a Japanese officer when it went off."

The Japanese character, in its official form, so strongly marked by cunning, falsehood, and prevarication, has its reflection on Japanese testimony; what strange phases it may present within the precincts of its own native Courts of Law, is yet for the foreigner to learn, but seldom, if ever, where Japanese testimony has met the observation of strangers, has it gained a reputation different from what I have described it. Numberless instances might be

added to strengthen this opinion, and to prove its truth. I have though, I hope, placed before you enough for the object of this letter, namely, to show with what hesitation and doubt Japanese evidence is to be accepted, and the weakness of a judgment resting on it alone.

I am, Sir,

Your obedient servant,

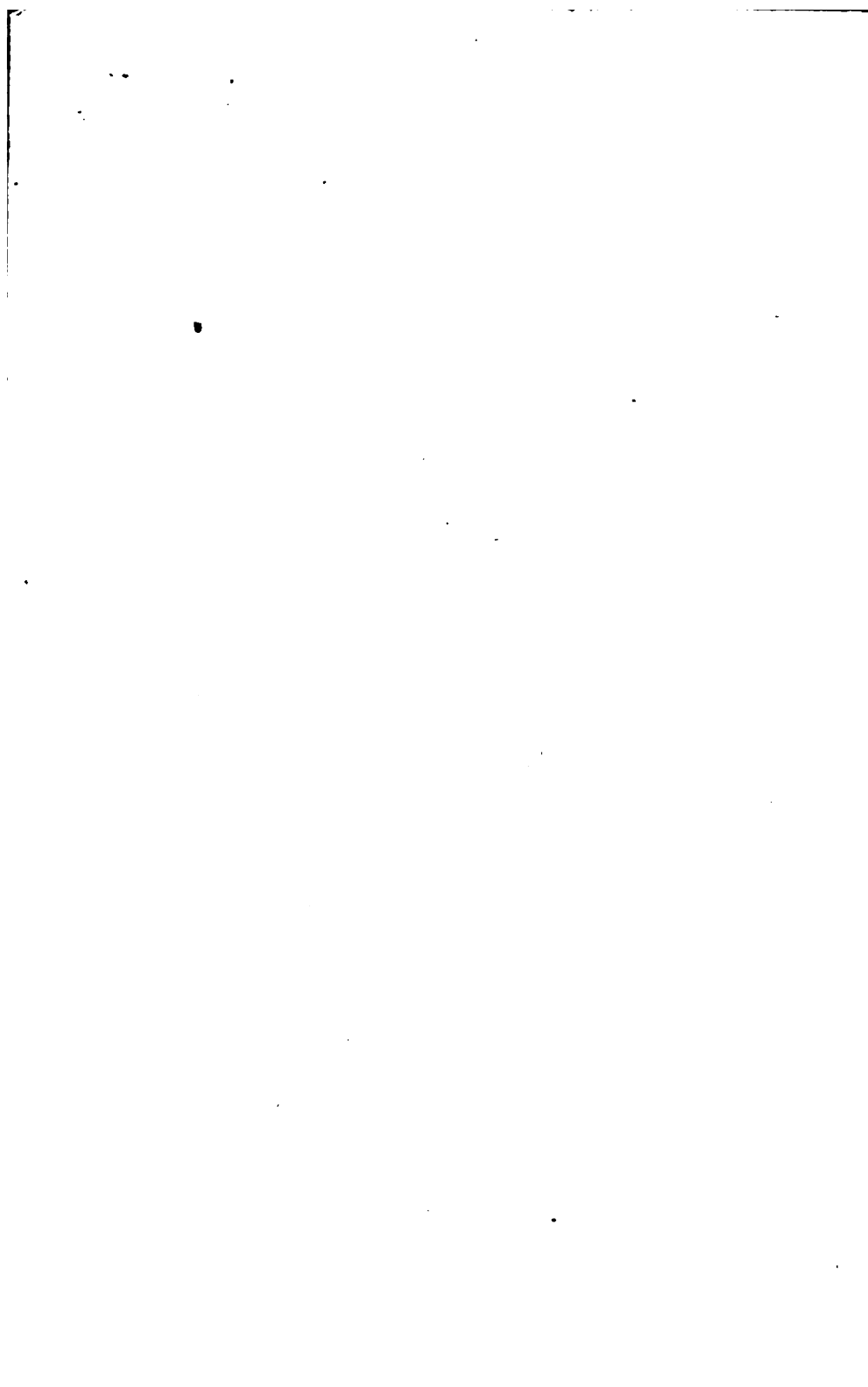
MICHAEL MOSS.

JAMES STANSFELD, Esq., M.P., &c.

35, *Thurlow Square, Brompton.*

Ex. 2. 11  
11/3/51

THE END.









1. The first part of the document is a list of names and addresses of the members of the committee.



